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A
NEW LAW DICTIONARY
 AND
GLOSSARY:

CONTAINING FULL DEFINITIONS OF THE PRINCIPAL
TERMS OF THE COMMON AND CIVIL LAW,
 TOGETHER WITH TRANSLATIONS AND EXPLANATIONS OF THE VARIOUS
TECHNICAL PHRASES
 IN DIFFERENT LANGUAGES, OCCURRING IN THE ANCIENT AND MODERN REPORTS, AND STANDARD
 TREATISES; EMBRACING ALSO ALL THE PRINCIPAL COMMON AND CIVIL
LAW MAXIMS.

COMPILED ON THE BASIS OF SPELMAN'S GLOSSARY, AND ADAPTED TO THE
JURISPRUDENCE OF THE UNITED STATES;
 WITH COPIOUS ILLUSTRATIONS, CRITICAL AND HISTORICAL.

By **ALEXANDER M. BURRILL.**
 COUNSELLOR AT LAW.

Vocum origines rationesque [Labec] percalluerat; eaque præcipue scientia ad enodandos plerosque juris laqueos utebatur
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PART II.

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fare. L. Lat. & Lomb. In Lombardic law. To take possession or seisin of land, by fixing a staff in it, or making use of any other symbol of the act. *Spelman*.

GUILD. [L. Lat. *gilda*.] A company or corporation. See *Gild*.

GUILDHALL. The *hall* or place of meeting of a *guild*, or gild. See *Gildhalla*.

The place of meeting of a municipal corporation. 3 *Steph. Com.* 173, note. The mercantile or commercial *gilds* of the Saxons are supposed to have given rise to the present municipal corporations of England, whose place of meeting is still called the *Guildhall*. *Id. ibid.*

GULE OF AUGUST. [L. Lat. *gula Augusti*; L. Fr. *goule de August*.] The first of August; the same with St. Peter's day *ad vincula*. *Stat. Westm.* 2, c. 30. *Stat.* 27 *Edw.* III. st. 3. *Spelman*. *Cowell*.

GURGES. Lat. In old English law. A gulf, or deep pit of water. *Co. Litt.* 5 b. The same, according to Lord Coke, with a *gors*, or wear; in Domesday, *guort* or *gort*. *Id. ibid.* A place for taking fish. *Reg. Orig.* 103 b. *F. N. B.* 95 A.

GUST, *Gest*. Sax. [Lat. *hospes*.] In old English law. A guest; a person who lodged a second night with another was so called, among the ancient Saxons. *Item secundum antiquam consuetudinem, dici poterit de familia alicujus qui hospitatus fuerit cum alio per tres noctes, quia prima nocte dici poterit uncuth, secunda vero gust, tertia nocte, hogehenehyne*. Also, according to ancient custom, it may be said of the family of one who has been lodged with another for three nights, that on the first night he may be called *uncuth*, (unknown,) on the second night *gust*, (or guest,) on the third night, *hogehenehyne*, (a domestic, or one of the household.) *Bract.* fol. 124 b.

GUTI, *Jutæ*. L. Lat. Jutes; one of the three nations who migrated from Germany to Britain at an early period. According to *Spelman*, they established themselves chiefly in Kent, and the Isle of Wight.

GUTTURA. L. Lat. In old English law. A gutter, or drain. *Reg. Orig.* 104 b.

GWABR MERCHED. Brit. Maid's fee. A payment or fine made to the lords of some manors in England, upon the marriage of their tenant's daughters, or other-

wise on their committing incontinency. *Cowell*. *Blount*. See *Marchet*, *Lairwite*.

GWALSTOW. Sax. [from *gwal*, a gallows, and *stow*, a place; L. Lat. *gwal-storium*.] In old English law. A place of execution, (*locus occidendorum*.) *L.L.* *Hen.* I. c. 11. *Spelman*.

GWAYF. The same as *waif*, (q. v.) *Par. Ant.* p. 196. *Cowell*.

GWELI. Brit. A gavel or well. 13 *Mees. & W.* 521.

GYLTWITE. Sax. In Saxon law. A fine, compensation or amends for a trespass or fraud. *Cowell*. *Blount*.

GYVU, *Gieu*, *Geu*. L. Fr. A Jew. *Et qe nul Gyyu, de ceo jour en avant tel manere de detter. Provis. de Judaismo*, 53 *Hen.* III. *Blount*.

H.

H is sometimes used in some Law Latin words in which it is more generally and properly omitted; thus, *Ostium* is sometimes written *Hostium*, *Coercio*, *Cohertio*, and the like. So, on the other hand, it is sometimes omitted where it should properly be used; thus, *Hutesium* occurs occasionally in the form *Utesium*, *Hypotheca* as *Ypotheca*, and the like.

HABE, (or **HAVE**.) Lat. A form of the salutatory expression *Ave*, (hail,) in the titles of the constitutions of the Theodosian and Justinian codes. *Prateus*. *Calv. Lex*. *Spelman*.

HABEAS CORPUS. L. Lat. (You have the body.) The name given to a variety of writs, (of which these were anciently the emphatic words,) having for their object to bring a party before a court or judge. The common *cupias* is, in this general sense, a *habeas corpus*, the writ in the original Latin commanding the sheriff to take the defendant, "so that you have his body," &c., (*ita quod habeas corpus ejus*, &c.); and, according to Mr. Reeves, it was originally so called. 2 *Reeves' Hist. Eng. Law*, 439. The term, however, is now exclusively used to designate a few special writs, employed in English and American practice, among which the writ to inquire into the cause of a person's imprisonment or detention by another, with the view to obtain his or her liberation,

(technically called a *habeas corpus ad subjiciendum*.) is the most celebrated. See *infra*.

HABEAS CORPUS AD RESPONDENDUM. L. Lat. (You have the body, to answer.) In English practice. A writ which issues where one has a cause of action against another, who is confined by the process of some inferior court, in order to remove the prisoner, and charge him with this new action in the court above. 3 *Bl. Com.* 129. 3 *Steph. Com.* 693. 1 *Tidd's Pr.* 349.

HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM. L. Lat. (You have the body, to do and receive.) In practice. A writ which issues out of any of the courts of Westminster Hall in England, when a person is sued in some inferior jurisdiction, and is desirous to remove the action into the superior court; commanding the inferior judges to *produce the body* of the defendant, together *with the day and cause* of his caption and detainer; (whence the writ is frequently denominated a *habeas corpus cum causa*.) *to do and receive* whatsoever the king's [or queen's] court shall consider in that behalf. 3 *Bl. Com.* 130. 3 *Steph. Com.* 694, and notes *ibid.* 1 *Tidd's Pr.* 404. A similar writ has been sometimes used in American practice. See *U. S. Digest*, Habeas corpus.

HABEAS CORPUS AD PROSEQUENDUM. L. Lat. (You have the body, to prosecute.) In English practice. A writ which issues when it is necessary to remove a prisoner in order to be tried in the proper jurisdiction wherein the fact was committed. 3 *Bl. Com.* 130. 3 *Steph. Com.* 694.

HABEAS CORPUS AD SATISFACIENDUM. L. Lat. (You have the body, to satisfy.) In English practice. A writ which issues when a prisoner has had judgment against him in an action, and the plaintiff is desirous to bring him up to some superior court, to charge him with process of execution. 3 *Bl. Com.* 129, 130. 3 *Steph. Com.* 693. 1 *Tidd's Pr.* 350.

HABEAS CORPUS AD SUBJICIENDUM. L. Lat. (You have the body, to submit to.) In practice. A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, [or person detained,] with the day and cause of his caption and detention, *ad faciendum, subjiciendum et recipien-*

dum, to do, submit to and receive whatsoever the judge or court awarding the writ shall consider in that behalf. 3 *Bl. Com.* 131. 3 *Steph. Com.* 695. This is the well known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law. 3 *Bl. Com.* 129. 1 *Id.* 135. 1 *Steph. Com.* 135. It was a common law writ, but was confirmed and extended by the statute 31 Car. II. c. 2, commonly called the Habeas Corpus Act. *Crabb's Hist.* 525. In modern practice, it is extensively used as a means of obtaining the possession of the persons of women and infants, by parties claiming to be entitled to their legal custody. *Macpherson on Infants*, 152—163, part i. c. xv. See *U. S. Digest* and *Supplement*, Habeas corpus.

HABEAS CORPUS AD TESTIFICANDUM. L. Lat. (You have the body, to testify.) In practice. A writ to bring a witness into court, when he is in custody at the time of a trial, commanding the sheriff to have his body before the court, to testify in the cause. 3 *Bl. Com.* 130. 2 *Tidd's Pr.* 809.

HABEAS CORPUS CUM CAUSA. L. Lat. (You have the body, with the cause.) In practice. Another name for the writ of *habeas corpus ad faciendum et recipiendum*, (q. v.) 1 *Tidd's Pr.* 348, 349.

HABEAS CORPUS ACT. The English statute of 31 Charles II. c. 2, providing the great remedy for the violation of personal liberty, by the writ of *habeas corpus ad subjiciendum*, and which is frequently considered as another *Magna Charta* of the kingdom. 3 *Bl. Com.* 135—137. 1 *Id.* 137. For a summary of its provisions, see 3 *Steph. Com.* 699, 702. This statute has been re-enacted or adopted, if not in terms, yet in substance and effect in all the United States. 2 *Kent's Com.* 27, and note. *Id.* 28—31.

HABEAS CORPORA JURATORUM. L. Lat. (You have the bodies of the jurors.) In English practice. A compulsive process awarded against jurors in the court of common pleas, commanding the sheriff to *have their bodies* before the court on the day appointed. It is the same with the *distringas*, issued in the Queen's Bench. 3 *Bl. Com.* 354. 3 *Steph. Com.* 590. 3 *Chitt. Gen. Pr.* 796, 797. See *Distringas juratores*.

HABENDUM. L. Lat. [L. Fr. *a aver*.]

(To have.) In conveyancing. One of the eight formal and orderly parts of a deed, following immediately after the premises; so called from the Latin word *habendum*, with which it commenced, and literally translated and retained in modern deeds, in the clause beginning with the words "*To have and to hold.*" Its original object was to determine the interest granted, or to lessen, enlarge, explain or qualify the premises; or, according to Lord Coke, to name again the feoffee, and to limit the certainty of the estate. 2 *Bl. Com.* 298. 4 *Kent's Com.* 468. *Co. Litt.* 6 a. *Shep. Touch.* 75. See *infra*. In modern deeds, the premises usually contain the specification of the estate granted, and hence the *habendum* has become in most cases a mere form; but where no estate is mentioned in the premises, the *habendum* continues to retain its original importance. 4 *Kent's Com.* 468. See *Shep. Touch.* (by Preston,) 76.

The following form of an ancient deed, from Bracton, will serve to illustrate the original use and importance of the *habendum*. *Sciatis presentes et futuri, quod ego talis, dedi et concessi, et hac presenti carta mea confirmavi tali, pro homagio et servitio suo, tantam terram cum pertinentiis in tali villa: HABENDAM et tenendam tali et heredibus suis, generaliter vel cum coarctatione hereditum, libere et quiete, &c.* Know [all] men, present and future, that I, (such a one,) have given and granted, and by this my present charter have confirmed to (such a one,) in consideration of his homage and service, (so much land,) with the appurtenances, in (such a town): To HAVE and to hold to (such a one) and his heirs, generally, or with a limitation of heirs, freely and quietly, &c. *Bract.* fol. 34 b, 35. See also the forms in Littleton, sect. 371, 372. It will be seen that in this example Bracton uses the word *habendam*, agreeing grammatically with *terram*; but this is disregarded in other instances, (see *infra*), and *habendum*, as a word of more general application, has become established in the later forms.

HABENDUM ET TENENDUM. L. Lat. In old conveyancing. To have and to hold. Formal words in deeds of land from a very early period. *Bract.* fol. 17 b.

HABENTES HOMINES. L. Lat. In old English law. Rich men; literally, having men. 1 *Mon. Angl.* 100. *Dufresne*. The same with *fasting-men*, (q. v.) *Cowell*.

HABERE. Lat. In the civil law. To

have. Sometimes distinguished from *tenere*, (to hold,) and *possidere*, (to possess); *habere* referring to the right, *tenere* to the fact, and *possidere* to both. *Calv. Lex*. So *habere* was otherwise distinguished as referring to incorporeal things, *tenere* to corporeal, and *possidere* to both. *Id.* *Prateus*.

Habere contractum; to have a contract; to contract. *Calv. Lex*.

Habere in procinctu; to have in readiness. *Id.*

Habere venale; to sell. *Id.*

HABERE. Lat. In old English law. To have. *Habere ad rectum*; to have one [forthcoming] to [answer] an accusation. *Bract.* fol. 124 b.

HABERE FACIAS POSSESSIONEM. L. Lat. (You cause to have possession.) In practice. A writ that issues for a successful plaintiff in ejectment, to put him in possession of the premises recovered. 3 *Bl. Com.* 412. 2 *Tidd's Pr.* 1244. *Chitt. Archb. Pr.* 765.

HABERE FACIAS SEISINAM. L. Lat. (You cause to have seisin.) In practice. A writ of execution for giving seisin of a freehold, as distinguished from a chattel interest. 3 *Bl. Com.* 412. *Cowell*.

HABERE FACIAS VISUM. L. Lat. (You cause to have view.) In old practice. A writ that lay in divers cases, as in dower, formedon, &c., where a view was to be taken of the lands in question. *Bract.* fol. 379. See *View*.

HABERJECTS, *Haubergets.* [L. Lat. *haubergettæ*.] A kind of cloth mentioned in Magna Charta. *Cap.* 25.

HABETO TIBI RES TUAS. Lat. Have, or take your effects to yourself. One of the old Roman forms of divorcing a wife. *Calv. Lex*.

HABILIS, (pl. *Habiles*.) Lat. Able; fit; competent; suitable. *Habiles ad matrimonium*; constitutionally fit for matrimony. 1 *Bl. Com.* 436. *Habilis* and *inhabilis.* *Shelf. Marr. & Div.* 25. *Admitto te habilem*; I admit thee able. *Co. Litt.* 344 a.

HABITARE. Lat. To inhabit; to dwell or reside. In the civil law, *habitare* properly signified to dwell permanently, as distinguished from *commorari*, (to stop for

a while.) But it had the latter sense also. *Calv. Lex. Prateus. Spiegelius, cited ibid.*

HABITATIO. Lat. [from *habitare*, q. v.] A habitation, or dwelling. *Towns. Pl. 116. 2 Inst. 702.*

In the civil law. The right of dwelling; the right of free residence in another's house. *Inst. 2. 5. Dig. 7. 8. Heinecc. Elem. Jur. Civ. lib. 2, tit. 5.*

HABITUS. Lat. Habit; apparel; dress, or garb. *Habitus et tonsura clericulis*; the clerical habit and tonsure. *4 Bl. Com. 367. 2 Hal. P. C. 372.*

HABLE. L. Fr. In old English law. A port or harbor; a station for ships. *Stat. 27 Hen. VI. c. 3.*

HABUNDA. L. Lat. In old records. Abundance; plenty. *Paroch. Ant. 548. Cowell.*

HACCHE. [Sax. *hæca*, a hatch or bolt.] A hatch; a gate or door. *Cowell.*

HACHIA. L. Lat. In old records. A hack; a pick, or instrument for digging. *Placita, 2 Edw. III. MS. Cowell.*

HADBOTE. In Saxon law. A recompense or satisfaction for the violation of holy orders, or violence offered to persons in holy orders. *Cowell. Blount.* Perhaps this word should be written *haelbote*, or *halibote*, from the Sax. *halg*, holy.

HADE. [L. Lat. *hada*.] In old records. A piece of land; a head of land, or headland. *Cowell. See Butts, Caput terræ, Caputia, Headlands.*

HADERUNGA. L. Lat. & Sax. Hatred; ill-will; prejudice, or partiality. *LL. Ethelred. Spelman. Cowell.*

HÆC EST FINALIS CONCORDIA. L. Lat. (This is the final agreement.) The words with which the foot of a fine commenced. *2 Bl. Com. 351.*

HÆREDA. In Gothic law. A tribunal answering to the English court leet, and of which it was said *de omnibus quidem cognoscit, non tamen de omnibus iudicat*; it takes cognizance of all matters, but does not finally determine all. *Stiernh. de Jur. Goth. I. 1, c. 2. 4 Bl. Com. 274.*

HÆREDES. Lat. (pl. of *Hæres*, q. v.) Heirs. *Bract. fol. 17, 20 b.*

HÆREDES NECESSARIJ. Lat. In the civil law. Necessary heirs; a term applied to the slaves of a testator. A slave made heir by his master was called *necessarius hæres*, because whether he would or not, (*sive velit sive nolit*,) he became immediately after the death of the testator absolutely free and a necessary heir. *Inst. 2. 19. 1. Heinecc. Elem. Jur. Civ. lib. 2, tit. 19, § 587.*

HÆREDES SUI ET NECESSARIJ. Lat. In the civil law. One's own (or proper) and necessary heirs. A term applied to the sons, daughters, grandsons or grand-daughters by a son or other direct descendants of a party deceased. *Inst. 2. 19. 2.* Called *sui*, because they were domestic, and even during the life of the father were considered, in a certain sense, owners of the estate, (*quodammodo domini existimantur*.) *Id. ibid.* And called *necessarii*, because they became heirs by the operation of law (the Twelve Tables) whether they would or not, as well in case of intestacy as where there was a will. *Id. ibid. Heinecc. Elem. Jur. Civ. lib. 2, tit. 19, § 588.*

HÆREDES EXTRANEI. Lat. In the civil law. Extraneous, strange or foreign heirs; those who were not subject to the power of the testator. *Inst. 2. 19. 3.*

HÆREDIPETA. Lat. In old English law. The next heir to lands. *LL. Hen. I. c. 70.* Properly one who endeavoured to get the good will of others in order to be made their heir; (*qui petit hæreditatem*;) an inheritance seeker. *Co. Litt. 88 b.*

HÆREDITAMENTUM. L. Lat. A hereditament. (q. v.) *Spelman.*

HÆREDITAS, Hereditas. Lat. [from *hæres*, an heir; L. Fr. *enheritance*.] An inheritance; an estate by succession; an estate transmissible by descent. *Hæreditas alia corporalis, alia incorporalis*; one kind of inheritance is corporeal, another incorporeal. *Co. Litt. 9. Divisio hæreditatis*; the division of an inheritance. *Inst. 3. 1. 6. Hereditas* occurs in the civil law.

Inheritance; hereditary succession. *Hæreditas est successio in universum jus quod defunctus antecessor habuit, ex quacunque causâ acquisitionis, vel successionis, cum seysinâ sive sine, &c.* Inheritance is the succession to the whole right which the deceased ancestor had, by whatever title of acquisition, or succession, with seisin or

without, &c. *Bract.* fol. 62 b. This is modified from the civil law. *Dig.* 50. 16. 24. *In feodo et hæreditate*; in fee and inheritance. *Bract.* fol. 207. *Hæreditas ab intestato*; succession from an intestate. *Inst.* 2. 9. 7.

Bracton contends that the word *hæreditas* is not derived from *hæres*; but that *hæres*, on the contrary, is from *hæreditas*. *Hæres dicitur ab hæreditate, et non hæreditas ab hærede.* *Bract.* fol. 62 b. 265.

Hæreditas nunquam ascendit. Lat. An inheritance never ascends. *Glanv.* lib. 7. c. 1. 2 *Bl. Com.* 211. A maxim of feudal origin, and which invariably prevailed in the law of England down to the passage of the statute 3 & 4 *Will.* IV. c. 106, § 6, by which it was abrogated. 1 *Steph. Com.* 378. See *Descent*.

HÆREDITAS JACENS. Lat. In civil and common law. A fallen or prostrate inheritance; the inheritance of a person deceased, while it *lay* unacquired by the heirs; an inheritance before it was entered upon by the heir, (*antequam adita fuerit ab hærede.*) *Bract.* fol. 160. *Id.* fol. 227.

An inheritance in abeyance or expectation; *lying* waiting, as it were, for the heir to take it up; (*donec relevetur in manum hæredis.*) *Co. Litt.* 342 b. *Bract.* fol. 84.

An inheritance or estate left without a legal owner. 2 *Bl. Com.* 259. The estate of a person deceased, where the owner left no heirs or legatee to take it, called also *caduca*; an escheated estate. *Cod.* 10. 10. 1. 4 *Kent's Com.* 425.

HÆREDITAS LUCTUOSA. Lat. In the civil law. A sad or mournful inheritance, or succession; as that of a parent to the estate of a child, which was regarded as disturbing the natural order of mortality, (*turbato ordine mortalitatis.*) *Cod.* 3. 25. 9. 4 *Kent's Com.* 397.

HÆRERE. Lat. To adhere; to be close or immediately next to. See *Hæres*.

To stop; to go no farther. *Qui hæret in littera hæret in cortice.* He who stops in the letter, stops in the rind, bark or exterior. *Co. Litt.* 283 b. He who goes no farther than the letter, stops in the mere rind or exterior covering of the law, without reaching its substance.

HÆRES, Heres. Lat. [from *hære*, to adhere, to be close or next to.] In the common law. An heir; he to whom lands, tenements or hereditaments, by the act of God and right of blood do descend, of some

estate of inheritance. *Co. Litt.* 7 b. See *Heir*.

Hæredem Deus facit, non homo. God makes the heir, not man. *Co. Litt.* 7 b. *Solus Deus hæredem facit.* God alone makes the heir. *Bract.* fol. 62 b.

Hæres est nomen collectivum. Heir is a collective name or noun. 1 *Ventr.* 215.

Hæres est nomen juris; filius est nomen nature. Heir is a name or term of law; son is a name of nature. *Bacon's Max.* 52, in *reg.* 11.

Hæres hæredis mei est meus hæres. The heir of my heir is my heir. *Wharton's Lex.*

Hæres est aut jure proprietatis aut jure representationis. An heir is either by right of property, or right of representation. 3 *Co.* 40 b.

According to Lord Coke, the words *hæreditas* and *hæres* are both derived from *hærendo*, (adhering,) that is, from closely resting upon; for he who is heir *hæret*, (adheres, that is, to the ancestor;) or he is so called from *hærendo*, because the inheritance *hæret*, adheres to him. (*Hæreditas et hæres dicuntur ab hærendo, quod est arcte insidendo, nam qui hæres est, hæret; vel dicitur ab hærendo, quia hæreditas sibi hæret.*) *Co. Litt.* 7 b. This idea of the close connection between heir and ancestor is carried still farther in the following maxims:

Hæres est alter ipse, et filius est pars patris. An heir is another self, and a son is part of the father. 3 *Cō.* 12 b, *Harbert's case*.

Hæres est eadem persona cum antecessore. An heir is the same person with his ancestor. *Co. Litt.* 22. *Branch's Princ.*

Hæres est pars antecessoris. An heir is a part of the ancestor. *Id. ibid.* So said, because the ancestor, during his life, bears in his body (in judgment of law) all his heirs. *Id. ibid.*

HÆRES. Lat. In feudal law. An heir. *Nomen hæredis, in prima investitura expressum, tantum ad descendentes ex corpore primi vasalli extenditur; et non ad collaterales, nisi ex corpore primi vasalli sive stipitis descendant.* The name of heir, expressed in the first investiture, extends only to the descendants of the body of the first feudatory; and not to collaterals, unless they descend from the body of the first feudatory, or stock (of descent.) *Craig Jus. Feud.* lib. 1, tit. 9, § 36. 2 *Bl. Com.* 221. Hence an heir is said properly to mean a son. *Calv. Lex. Jur.* *Id. de Verb. Feudal.*

HÆRES, (more commonly **HERES.**)

Lat. In the civil law. An heir; one who succeeds to the whole right or estate of the testator; (*successor in universum jus quod defunctus habuit.*) *Heinecc. Elem. Jur. Civ. lib. 2, tit. 14. Calv. Lex. Jur. Dig. 50. 16. 24. Id. 50. 17. 62.* Heredis *appellatio non solum ad proximum heredem, sed et ad ultiores refertur; nam et heredis heres, et deinceps, heredis appellatione continetur.* The appellation of heir belongs not only to the next heir, but to more remote persons also; for the heir of an heir, and so on in succession, is included in the term heir. *Dig. 50. 16. 65.*

The term *hæres* or *heres* in the civil law, scarcely corresponds with the "*heir*" of the common law, or rather it is used in senses which do not at all belong to the latter word. Thus, in the civil law a person was said to be appointed, instituted (*institutus*) or made (*factus*) an *hæres* by another. *Inst. 2. 14.* But the maxim of the common law has always been that no man can make an heir. *Hæredem Deus facit, non homo.* The term *hæres* had, in some of its applications, nearly or quite the sense of the modern "*devisee*," and in others that of "*executor*," or "*trustee*." Thus, it was an essential formality in making a testament, that some person should be appointed heir, (*hæres*), to whose faith it should be committed that he should convey the inheritance to another person; (*ut aliquis hæres instituatur, ejusque fidei committatur ut eam hæreditatem alio restituat.*) *Inst. 2. 23. 2.*

HÆRES ASTRARIUS. In old English law. An heir in actual possession. See *Astrarius*.

HÆRES DE FACTO. L. Lat. In old English law. Heir from fact; that is, from the deed or act of his ancestor, without, or against right. Applied to an heir whose title originated in the wrongful act, such as the disseisin, of his ancestor. *Bract. fol. 172.* An heir in fact, as distinguished from an heir *de jure*, or by law. See *De facto*.

HÆRES EX ASSE. Lat. In the civil law. An heir to the whole estate; a sole heir. *Inst. 2. 23. 9.* See *As*.

HÆRES EXTRANEUS. Lat. In the civil law. A strange or foreign heir; one who was not subject to the power of the testator, or person who made him heir. *Inst. 2. 19. 3. Qui testatoris juri subjecti*

non sunt, extranei hæredes appellantur. Id. ibid.

HÆRES FACTUS. Lat. In the civil law. An heir made by will; a testamentary heir; the person created universal successor by will. *Story's Conflict of Laws, § 507. 3 Bl. Com. 224.* Otherwise called *hæres ex testamento*, and *hæres institutus. Inst. 2. 9. 7. Id. 2. 14.*

Applied by Blackstone to an heir to the crown, where the inheritance is under a particular settlement. *1 Bl. Com. 196.*

HÆRES FIDUCIARIUS. Lat. In the civil law. A fiduciary heir, or heir in trust; a person constituted heir to an estate by will, in trust for the benefit of another who was called *fidei commissarius*, (q. v.) *Inst. 2. 23. 1, 2.* Corresponding nearly to the *trustee* of the English law. *Crabb's Hist. Eng. Law, 391.*

HÆRES FIDEICOMMISSARIUS. Lat. In the civil law. The person for whose benefit an estate was given to another (termed *hæres fiduciarius*, q. v.) by will. *Inst. 2. 23. 6, 7, 9.* Answering nearly to the *cestui que trust* of the English law. *Cooper's Just. Inst. Notes, ibid. Crabb's Hist. 391, note.*

HÆRES LEGITIMUS. Lat. A lawful heir. *Hæres legitimus est quem nuptiæ demonstrant.* He is a lawful heir whom marriage points out as such; who is born in wedlock. *Co. Litt. 7 b. Bract. fol. 88.*

HÆRES NATUS. Lat. In the civil law. An heir born; one born heir, as distinguished from one made heir, (*hæres factus*, (q. v.) an heir at law, or by intestacy, (*ab intestato*); the next of kin by blood, in cases of intestacy. *Story's Conflict of Laws, § 507. 3 Bl. Com. 224.*

HÆRES NECESSARIUS. Lat. In the civil law. A necessary heir; a slave made an heir was so called because on the death of the testator, whether he would or not, he became instantly free and a necessary heir. *Inst. 2. 19. 1.* See *Hæredes necessarii*.

HÆRES SUUS. Lat. In the civil law. A proper heir; literally, one's own heir. A term applied to the children and grand-children of a deceased person. *Inst. 3. 1. 4, 5.* See *Hæredes sui*.

HÆRETARE. L. Lat. In old English

law. To give a right of inheritance, or make the donation hereditary to the grantee and his heirs. *Cowell. Histor. Eliensis*, c. 41, cited *ibid*.

HAFNE COURTS. [*hafne*, Dan. a haven, or port.] In old English law. Haven courts, (*curiæ portus*;) courts anciently held in certain ports of England. *Lit. Pat. Ric. Duc. Gloc. Admir. Angl. 5 Edw. IV. Spelman.*

HAGA. L. Lat. [from Sax. *hægh* and *hagh*, an enclosure, or hedge.] In old English law. A house. *Radulphus tenet unam hagam de xii denar': Willielmus v hagas de v sol. Nigel v hagas quæ faciunt servitium*: Ralph holds one house of twelve pence; William five houses of five shillings; Nigel five houses which do service. *Domesd. titt. Sussex, Terra Rogerii*, nu. 11. *Spelman.* Defined by an anonymous author to be a house with shops, (*domus cum shopis*.) *Spelman.* A house in a city or borough. *Co. Litt. 5 b, 56 b. Cowell. Cum novem præfatæ civitatis habitaculis quæ patria lingua hagan appellari solent.* With nine small dwellings of the said city which in the native language are called *hagan*. *Chart. Ethelred. Regis, in auct. Mat. Par. fol. 240. Blount.*

A hedge. *Fossato et haga*; with a ditch and hedge. *2 Mon. Angl. 273.*

A military enclosure; (*sepimentum militare*.) *Spelman.*

HAIA, Haga. L. Lat. [from Fr. *haie*, *haye*.] In old English law. A hedge, or enclosure. *Inclusum fossato, haya vel palatio*; inclosed with a ditch, hedge or paling. *Bract. fol. 97 b. Parvo fossato et bassa haia includere*; to enclose with a small ditch and low hedge. *Reg. Orig. 267 b. 8 Co. 138 a.*

A park, or enclosed ground. *Spelman.* See *Hay*.

HAIE, Hays. L. Fr. A hedge. *Kelham.*

HAIEBOTE. Fr. & Sax. [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance.] In old English law. A permission or liberty to take thorns, &c., to make or repair hedges. *Blount.* See *Haybote*.

HALF BLOOD. [L. Fr. *demy-sangue*, *demy-sanke*.] In the law of descent. The blood of one parent only; blood on the father's or mother's side only.* A term applied to collateral relations when descended from a single person who is the

only ancestor common to them both. Thus, brothers and sisters are of the half blood when they are born of the same father, but different mothers, and *vice versa*. 1 *Bl. Com.* 194. 2 *Id.* 227. 1 *Steph. Com.* 386. 2 *Kent's Com.* 423—428. 4 *Id.* 403, 406, notes. Persons so related are called in the civil law *unilaterales, ex uno latere juncti*, (related on one side,) *ex uno parente conjuncti*, (related by one parent only.) *Nov. 118, c. 2, 3. Dig. 38. 10. 10, 13. 1 Mackeld. Civ. Law, 140, § 132.*

HALF DEFENCE. In pleading. The technical name of the common clause at the commencement of a defendant's plea,—"And the said defendant, by —, his attorney, comes and defends the wrong, (or force,) and injury, when, &c." Called *half defence* from its abbreviated form. See *Defence, Full defence*.

HALFKINEG, Healskoning. Sax. In Saxon law. Half-king, (*semi-rex*.) A title given to the alderman of all England. *Crabb's Hist. 28. Spelman.*

HALF PROOF. [L. *semi-plena probatio*.] In the civil law. Proof by one witness, or a private instrument. *Hallifax Anal. b. 3, ch. 9, num. 25. 3 Bl. Com. 370.*

HALF SEAL. In English law. A seal used in chancery for the sealing of commissions to delegates appointed upon any appeal in ecclesiastical or marine causes. *Stat. 8 Elis. c. 5. Cowell.*

HALF TONGUE. [L. Lat. *medietas linguæ*.] A term anciently applied to a jury, one half of which consisted of denizens or natives, and the other half of aliens. See *De medietate linguæ, Medietas linguæ*.

HALF YEAR. [L. Lat. *tempus semestris*.] In legal computation. The period of one hundred and eighty-two days; the odd hours being rejected. *Co. Litt. 135 b. Cro. Jac. 186. Yelv. 100. 1 Steph. Com. 205. 2 Crabb's Real Prop. 423, § 1577. 1 N. Y. Rev. St. [606] 615, § 3.*

HALIGEMOT, Halimots, Halmot. Sax. [from *heal*, a hall, and *gemot*, or *mot*, a meeting.] In Saxon law. The meeting of a hall, (*conventus aula*,) that is, a lord's court: a court of a manor, or court baron. *LL. Hen. I. c. 10. Spelman.* So called from the *hall*, where the tenants or free-men met, and justice was administered. *Crabb's Hist. Eng. Law, 26.*

HALIMOT, *Halimote*, *Halmot*, *Hal-mote*. Sax. [See *Haligemot*.] In old English law. A meeting of citizens in their public hall; otherwise called *folcmot*. *Spelman*. *Cowell*. *Blount*. In London, every company had a hall wherein they kept their courts. 4 *Inst.* 249. See *Haligemot*, *Halymot*.

HALL. [Sax. *heal*; L. Lat. *aula*, *halla*.] In old English law. A chief mansion house or habitation. See *Halla*. The place where a lord's court was held. See *Haligemot*. A king's palace, where his court was held. See *Aula*.

HALLA. L. Lat. In old English law. A hall or mansion house. In *Newcerct* hundred *ipse Hugo tenet unam terram quam Azor Rot tenuit de R. E. sine halla*. In Newkirk hundred the said Hugh holds one piece of land which Azor Rot held of king Edward, without a *hall*, or house. *Domesd.* titt. *Chent*, *Terra Hug. de Mountfort*. *Blount*.

HALLAGE. In old English law. A fee or toll due for goods or merchandize vended in a hall. *Jacob*.

A toll due to the lord of a fair or market, for such commodities as were vended in the common hall of the place. *Cowell*. *Blount*.

HALMETUS. L. Lat. A halmote, or halimot, (q. v.) *Cowell*. Properly *halimotus*. *Spelman*, voc. *Haligemot*.

HALMOTE, *Halmot*, *Hallmote*. See *Haligemot*, *Hulimot*.

HALSFANG. See *Healsfang*.

HALT. L. Fr. High. *Kelham*. See *Hault*.

HALYMOTE, *Halimot*, *Haligemot*. Sax. [from *halg*, holy, and *mot*, or *gemot*, a meeting.] In old English law. A holy or ecclesiastical court; otherwise called *circgemot*, and *chirgemot*, (qq. v.) *Spelman*. 4 *Inst.* 321.

HALYWEROFOLK. Sax. In old English law. People who held land for the service of repairing or defending a church or sepulchre; for which pious labours they were excused from feudal and military services. Particularly applied to in the province of Durham. *Hist. apud Wharton*. *Cowell*. *Ra-Dei gratia Dunelmensis Episco-*

pus, omnibus hominibus suis, Francis et Anglis, de Haliwerfolk, salutem. *Ranulph*, by the grace of God, bishop of Durham, to all his men, French and English, of *haliwerfolk*, greeting. 1 *Mon. Angl.* 512 b. *Blount*.

HAM. Sax. In Saxon and old English law. A house or dwelling; a home. *Ætham*; at home. *LL. Inæ*, c. 5. *Spelman* supposes the radical meaning to be an enclosure or circuit, something that goes around. Hence the *hem* of a garment.

A collection of houses; a village or town. Hence the names of many places in England ending with *ham*, as *Nottingham*, *Buckingham*, &c. *Spelman*.

A piece of land; a home close, or little meadow; a narrow skirt, hem, or edge of meadow. See *Hama*, *Hamma*.

HAMA. L. Lat. In old English law. A hook; an engine with which a house on fire is pulled down. *Yelv.* 60.

A piece of land. See *Hamma*.

HAMALLARE. L. Lat. [from *mallum*, a court.] In old European law. To summon to court, (*ad mallum, seu in jus vocare*;) to go to law with; to sue or implead. *Marculf.* lib. 1, form. 36. *Spelman*. See *Admallare*.

HAMALLUS. L. Lat. [from *mallum*, a court.] In old European law. One who was summoned to court, (*in mallum vocatus*.) *L. Salic.* tit. 49. *Spelman*.

HAMBELETTUM. L. Lat. In old English law. A hamlet. *Bract.* fol. 37 b.

HAMBLING. In the forest law. The hoxing or hock-sinewing of dogs; an old mode of laming or disabling dogs. *Termes de la ley*.

HAMEL, *Hamele*, *Hamelle*. L. Fr. A hamlet. *Thel. Dig.* lib. 11, c. 16. *Kelham*. Used also as an English word. *Spelman*. *Cowell*.

HAMELETA, *Hamelecta*. In old English law. A hamlet. See *Hamleta*.

HAMELLUS. L. Lat. In old records. A hamel, or hamlet. *Cowell*.

HAMESECKEN, *Hamesucken*, *Haim-sucken*. In Scotch law. The violent entering into a man's house without license or against the peace, and the seeking and as-

assaulting him there. *Skene de Verb. Signif.* 2 *Forbes' Inst.* 139. The same with *hamsocen*, *hamsoken*, or *hamsocne*, (qq. v.)

The crime of housebreaking or burglary. 4 *Bl. Com.* 223.

HAMFARE. Sax. [from *ham*, a house.] In Saxon law. An assault made in a house; a breach of the peace in a private house. *Gloss. in X. Scriptores. Ranulf. Cestrens.* lib. 1, c. 50. *Spelman. Blount.* The same with *hamsockne*, (q. v.)

HAMLET, Hamel, Hampsel. Sax. [dimin. of *ham*, a town or vill; or from *ham*, and *let*, or *lit*, a member or part; L. Lat. *hamleta*, *hameleta*.] A little village, or vill, (*villula*;) or rather a part or member of a vill, or town; a part less than half. *Spelman.* An appendage to a town. 1 *Bl. Com.* 115. Supposed by *Spelman* to have consisted of less than five freemen or frankpledges. See *Vill, Demivill*.

From the L. Lat. forms, *hamelettum* and *hamelecta*, this word seems to have once been written or pronounced *hamblet* and *hamlect*.

HAMLETA, Hamletta. L. Lat. A hamlet. *Spelman.*

HAMMA, HAMA. L. Lat. [from Sax. *ham*, a home or house.] In old records. A home close; a smallcroft; a little meadow, or ham. *Quoddam pratunculum quod vocatur hamma. Kennett's Paroch. Ant.* 135.

A narrow skirt, hem, or edge of meadow or grass, in a common field. *Id.* 572. *Cowell.*

HAMPSEL. A hamlet. *Spelman, voc. Hamel. Cowell, voc. Hamlet.*

An old house, or decayed cottage. *Kitchin.* fol. 103. *Cowell.*

HAMSOCA. L. Lat. In Saxon law. *Hamsoken*, or *hamsocne*. The privilege or liberty of a man's own house; a breach of such privilege by a violent entry. *LL. Edmund.* c. 6.

A fine for such entry; an immunity from such fine. *Spelman.* See *Hamsocne*.

HAMSOCNE, Hamsokne, Hamsockne, Hamsoken, Hamsockene, Homesoken. Sax. [from *ham*, a house, and *socne*, a liberty: L. Lat. *hamsoca*, *hamsocna*.] In Saxon law. The liberty, privilege, or immunity of a man's house. *Spelman, voc. Hamsoca.* The right to its exclusive enjoyment, undisturbed by the entry or act of another.*

A breach of the immunity of a man's house by entering it against his will; the violent entry of a house, (*invasio mansionis*.) *LL. Canuti*, c. 39. *Spelman.* *Hamsokne, quæ dicitur invasio domus contra pacem domini regis*: *Hamsokne*, which is called the forcible entry of a house against the king's peace. *Bract.* fol. 144 b. The offence of burglary. 4 *Bl. Com.* 223. See *Hamesecken*.

An assault made in a house, (*insultus factus in domo*;) the same with *hamfare*, (q. v.) *Ranulf. Cestrens.* lib. 1, c. 50. *Spelman.*

A franchise or privilege granted to lords of manors, to hold pleas and take cognizance of the offence of entering a house against the will of the occupant, and of imposing and exacting fines therefor. *Spelman, voc. Hamsoca. Blount.*

A fine or amercement imposed for entering a house forcibly and without permission, and against the peace; an immunity or acquittance from such fine; (*quietantia misericordie intrationis in alienam domum vi et injuste*.) *Fleta*, lib. 1, c. 47. *Rastal, apud Spelman, voc. Hamsoca.*

HAMSOKEN, Hamsokne. See *Hamsocne*.

HANAP. L. Fr. A cup. *Litt.* sect. 344. A hamper. *Kelham.*

HANAPER, Hanper, Hamper. [L. Lat. *hanaperium*.] In old English practice. A bag or basket of larger size, (*fiscus vel sporta grandior*;) in the English chancery, in which the fees arising from the sealing of writs, charters, &c., were anciently kept. *Spelman, voc. Hanaperium. Gilbert's For. Rom.* 16. The *fiscus*, or exchequer of the chancery. *Stat.* 10 Ric. II. c. 1.

HANAPER OFFICE. An office on the common law side of the English court of chancery, in which the writs relating to the business of the subject, and the returns to them, were anciently kept. 3 *Bl. Com.* 48, 49. So called, according to Blackstone, because these writs were, according to the simplicity of the times, originally kept in a hamper, in *hanaperio*. *Id. ibid.* But the hamper or basket, as *Spelman* has shown, was for keeping the fees or money of the office, and not for papers. *Spelman, voc. Hanaperium.* See 5 Co. 43 b, *Bohun's case.* See *Hanaper*.

HANAPERIUM. L. Lat. A hanaper or hamper. *Spelman.* See *Hanaper*.

HAND. [Lat. *manus*; Fr. *main*, *mayn*.] In old practice. An oath; so called from the use of the *hand* in making it. See *Oath*, *Manus*.

One who made oath, especially one who swore for another; a compurgator. *Jura-bit duodecima manu*; he shall swear by twelve hands, that is, he shall establish it by the oath of twelve men. *Glanv.* lib. 1, c. 9. *Il covint aver ous luy xi maynz de jurer ous luy*; he must have eleven hands to swear with him. *Dyversite des Courts*, fol. 305. 3 *Bl. Com.* 343, 344.

The use of the *hand* in judicial proceedings, not only for making oath, but for the purpose of identifying parties, has been practised in English law from the earliest period. Thus, in the ancient appeals of felony, when the parties came to make the oath required of them before engaging in the *duellum*, or combat, they took each other by the *hand*, and first the appellee or accused swore thus; "Hear this, O man whom I hold by the hand, (*Ceo oyes, vous home qui jeo teigne par la mayn*, or *Hoc audis, homo quem per manum teneo*;) who makest thyself to be called A. by the name of baptism, that I did not slay thy father or brother, &c. So help me God and these holy things." And then the appellor or accuser swore: "Hear this, O man whom I hold by the hand, who makest thyself to be called B. by the name of baptism, that thou art perjured, and therefore perjured, because, &c. So help me God, &c." *Bract.* fol. 141 b. *Britt.* c. 22. A prisoner brought to the bar of a court for arraignment is still required to hold up his *hand*, as one of the formalities of that proceeding. See *Arraignment*.

HANDBOROW. In Saxon law. A hand pledge; a name given to the nine pledges in a decennary or friborg; the tenth or chief, being called *headborow*, (q. v.) So called as being an inferior pledge to the chief. *Spelman*.

HANDGRITH, *Hangrith*. Sax. [from *hand* or *hond*, and *grith*, peace.] In Saxon and old English law. Peace or protection given by the king with his own hand. *Compact. inter Alured. & Guthrun.* sec. 1. *LL. Hen. I.* c. 13. *Cowell*.

HAND HABEND, *Hand habbend*. Sax. [from *hand*, and *habbend*, having; q. d. having in hand.] In Saxon law. A thief caught with the thing stolen in his *hand*, or possession. *LL. Hen. I.* c. 59. *Bract.* fol. 150 b, 154 b. Answering to the *fur*

manifestus, (q. v.) of the civil law. Called *habbendre handa*, in an old record cited by Blount. *Concil. Berghamsted*, A. D. 697. Written by Bracton, *hond habend*, (q. v.)

HANDSALE. In Gothic law. A sale made or confirmed by the ceremony of the parties shaking *hands*, called *venditio per mutuum manuum complexionem*. *Stiernhook, de Jur. Goth.* lib. 2, c. 5. This was anciently held necessary, among all the northern nations, to bind the bargain, and the custom is still retained in some verbal contracts. 2 *Bl. Com.* 448.

The price or earnest given immediately after the shaking of hands, or instead thereof. *Id. ibid.*

HANGING. [Lat. *pendens*.] Pending; during the pendency. "If the tenant alien, *hanging* the præcipe." *Co. Litt.* 266 a.

HANGING. [Lat. *suspensio per colum.*] In criminal law. Suspension by the neck; the mode of capital punishment used in England from time immemorial, and universally adopted in the United States. 4 *Bl. Com.* 403.

HANGWITE, *Hangwit*. Sax. [from *hangian*, to hang, and *wite*, a fine or penalty.] In Saxon law. A fine for hanging a thief without judgment, or legal trial, (*præter juris exigentiam*), or for his escape; an immunity or acquittance from such fine or liability. *Spelman. Cowell.* In Domesday it is written *hangwitha*.

HANSA. L. Lat. In old records. A hanse, or commercial confederacy. *Carta Hen. VII. apud Blount.* See *Hanse*.

HANSE. Goth. A society of merchants combined together for the good usage and safe passage of merchandise from kingdom to kingdom. *Cowell.* A commercial confederacy.* *Spelman* thinks this word was originally *hause*, (with *u* for *n*), or *ause*.

HANSE TOWNS. Certain commercial cities in Germany, which associated for the protection of commerce towards the close of the twelfth century; at the head of which were the cities of Lubeck, Hamburg, and Bremen. The league formed between them was called the Hanseatic league, the most powerful commercial confederacy known in history. 1 *Robertson's Charles V.* 63, and *Appendix*, Note xxx. 3 *Kent's Com.* 14. The code of maritime law known

as the Laws of the Hanse Towns, or *Jus Hanseaticum Maritimum*, was established by this confederacy. *Id.* 14, 15.

HANTELOD. Germ. [from *hant*, hand, and *lod*, or *load*, laid.] In old European law. An arrest, or attachment. *Spelman*.

HAP. [L. Fr. *happer*.] To catch or snatch; to get, gain or obtain; to get by chance.* *Cowell*. See *Happer*.

HAPPER. L. Fr. To chance, happen or fall out; to hap; to get or obtain; to get by chance.* *Kelham*. L. Fr. *Dict*.

HAQUE. In old statutes. A hand gun, about three quarters of a yard long. *Stat. 38 Hen. VIII. c. 6. Stat. 2 & 3 Edw. VI. c. 13.*

HARBOUR. In maritime law. A shelter or safe station for vessels; a haven or port.* A space of water so enclosed by the land as to be safe from the perils of the ocean. 1 *Duer on Ins.* 281. Any navigable water where ships can ride in safety. *Webster*. Harbour and port are very commonly used as synonymous terms. 1 *Duer on Ins. ub. sup.* Hubbard, J., 9 *Metcalf's R.* 371, 377. A distinction is however sometimes made between them. *Id. ibid.* Strictly, harbour seems to denote a place for the accommodation of vessels; port, a place for the reception and delivery of cargoes. See *Port*, *Portus*.

To HARBOUR. To shelter or secrete; to receive and secrete a person, especially a fugitive; to receive and secrete illegally, or in opposition to the claim of another.* To receive clandestinely and without lawful authority, a person for the purpose of so concealing him that another having a right to the lawful custody of such person shall be deprived of the same. *Bouvier*. Woodbury, J., 5 *Howard's R.* 215, 227.

HARER, *Harier*. L. Fr. To stir up; to provoke; to importune. *Kelham*.

HARMISCARA. L. Lat. In old European law. A kind of fine. *Spelman*, voc. *Harniscara*. Supposed by some to be a species of corporeal punishment. *Id. ibid.* The etymology and meaning of this word are both very uncertain.

HARNASCA. L. Lat. In old Euro-

pean law. The defensive armour of a man; harness. *Spelman*.

HARNISCARA. L. Lat. In old European law. A kind of fine. The same with *harniscara*, (q. v.)

HARO, HARRON. Fr. In Norman, and early English law. An outcry, or hue and cry after felons and malefactors. *Cowell*. It seems to have been equivalent to the English "out." Thus, where the chamberlain of the bishop of Ely had killed one William de Holme, the sister of the deceased followed the bishop, crying out with a terrible clamour, "harron upon thee, Thomas de Lylde, harron, harron upon thee; for thou hast slain my brother William de Holme, harron upon thee, harron." *Hist. Eliens.* apud *Wharton. Angl. Sacr.* par. 1, p. 658.

HARTH, (or HEARTH) PENNY. [Sax. *heorth peni*.] In ancient English law. A tax or tribute of a penny imposed upon every hearth or house; the same with Peter-pence, or Romescot. *Spelman*.

HASPA. L. Lat. In old English law. The hasp of a door; by which livery of seisin might anciently be made, where there was a house on the premises. *Fieri debet traditio per ostium, et per haspam, vel annulum*; livery should be made by the door, and by the hasp or ring, [that is, by delivering these to the party, in the name of the whole.] *Bract.* fol. 40, 398.

In old records. The hasp or clasp of a book. *Liber Statut. Eccl. Paul. Lond.* MS. fol. 29 a. *Cowell*.

HASTA. Lat. A spear; the badge of a sale by auction. *Hasta subicere*; to put under the spear; to put up at auction. *Calv. Lex.* In modern phrase, to put under the hammer.

HASTER. L. Fr. To haste; to hasten or despatch. *Britt.* c. 99.

HASTIF, *Hastyfs*. L. Fr. Hasty; inconsiderate; immature. *Britt.* c. 99.

HAT MONEY. [Fr. *chapot*.] In maritime law. An allowance formerly made to the master of a vessel for the purchase of winter clothing, which, according to Jacobsen, was mentioned in almost all charter parties. *Sea Laws*, 88. Supposed to be the same with the modern allowance of *primage*. *Bouvier*. But see *Molloy de Jur. Mar.* 305.

HAUBER. O. Fr. [from Fr. *haut*, or *hault*, high, and *ber*, a baron.] A high lord; a great baron. *Spelman*.

HAUBERGETTA. L. Lat. Haberjects; a kind of cloth mentioned in *Magna Charta*. *Una [sit] latitudo pannorum tinctorum, russalorum, et haubergettarum, sc. duas ulnas infra listas*. [There shall be] one breadth of dyed cloths, russets, and hauberjects, to wit, two ells within the lists. *Magna Charta*, 9 *Hen.* III. c. 25.

HAUBERT. L. Fr. A coat of mail. *Co. Litt.* 108 a. *Spelman*. *Servitium hauberticum*; military service. *Co. Litt. ub. sup.* See *Fief d'haubert*.

HAULT, Halt. L. Fr. [from Lat. *altus*, high.] High. *Le hault strete*; the high street or high-way. *Year Book, M.* 19 *Ed.* II. 842. *Thel. Dig.* lib. 10, c. 11, ¶ 8.

Forcible or efficacious in law. *Ci hault barre*; so high a bar. *Stat. Mod. Lev. Fines*.

HAUR. In old English law. Hatred. *LL. Will.* I. c. 16. *Blount*.

HAVEDELOND. [Sax. *heafodlond*?] In old records. A headland. *Paroch. Antiq.* 537. *Cowell*.

HAW. [Sax. *hagh*; L. Lat. *haga*, q. v.] In old English law. A house. *Placit. temp. Edw. I. & II. MS.* *Cowell. Blount*.

A small quantity of land lying near a house. *Cowell. Blount*.

HAWGH, Hough. In old English law. A valley. *Co. Litt.* 5 b.

HAWKERS. Persons who carry goods about from place to place for sale. A term applied, from an early period, to those persons who went about from place to place, buying and selling merchandise which ought to be uttered in open market. *Stat.* 25 *Hen.* VIII. c. 6, and 33 *Hen.* VIII. c. 4. Supposed to be derived from the uncertain wanderings of such persons, like those who with *hawks* seek their game where they can find it. *Cowell. Blount*.

HAY. [L. Fr. *haye*; L. Lat. *haia*, *haya*.] In old English law. A hedge. *Cowell*. See *Haia*.

A piece of ground enclosed with a hedge; an enclosure in forests and parks. *Blount*.

HAYA. L. Lat. In old English law. A hay; an enclosure, or a piece of ground enclosed. See *Hay*.

A hedge. See *Haia*.

HAYBOTE, Heybote. [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance.] Hedgebote; an allowance of wood to a tenant for repairing his hedges or fences. 2 *Bl. Com.* 35. See *Hedgebote, Haiebote, Heybote*.

HAYWARD, Haward, Heyward. [from Fr. *hay*, a hedge, and *ward* or *gard*, keeping.] In English law. An officer who keeps the common herd or cattle of a town; so called, because one part of his office is to see that they neither break nor crop the hedges of inclosed grounds. *Cowell. Blount. Kitch.* 46. See *Heyward*. A similar office is retained in the United States, but the name is generally corrupted to *howard*, as in *hog-howard*.

HEADBOROUGH. See *Headborow*.

HEADBOROW, Headborough. [from Sax. *heafod*, head, and *borgh*, a pledge.] In Saxon law. A chief pledge, (*capitalis plegius*;) the head or principal man of a frank pledge, decennary or tithing; called also *borowhead, borwealder, borghiealder, borsholder, tithingman*. *Spelman.* 1 *Bl. Com.* 114. The other nine pledges were called *handborow*, (q. v.)

In modern law. A constable. *Termes de la ley. Willcock on Constables*.

HEADLAND. [L. Lat. *caputium, chevitia, caput terræ*.] A slip of unploughed land left at the head or end of a ploughed field; otherwise called a *butt*. *Litt. R.* 13. See *Butts*.

HEADSILVER. See *Common fine*.

HEAFOD. Sax. Head.

HEALSFANG, Halsfang, Healfang. Sax. [from *hals*, neck, and *fangen*, to grasp: L. Lat. *collistrigium*, q. v.] In Saxon law. The pillory; an engine of punishment by which the neck of the offender was enclosed and secured between two boards, so that the head could not be drawn out. *Spelman*. See *Pillory*.

A fine paid as a commutation for this kind of punishment. *LL. Canuti MS.* c. 64. *LL. Hen.* I. c. 12. *Spelman*.

HEAPED MEASURE. That kind of measure in which the commodities mea-

sured are *heaped* above the top of the vessel containing them.* By the Revised Statutes of New-York, it is provided that all commodities sold by heaped measure shall be duly heaped up in the form of a cone, the outside of the measure by which the same shall be measured, to be the extremity of the base of such cone, and such cone to be as high as the articles to be measured will admit. 1 *Rev. St.* [608.] 618, § 21, [16.]

HEARING. In equity practice. That stage or proceeding in a cause which corresponds to the *trial* of a cause at law; the hearing of the arguments of the counsel for the parties upon the pleadings, or pleadings and proofs. 2 *Daniell's Chanc. Pract.* 1176, (Perkins' ed.) 1 *Barbour's Chanc. Pr.* 316.

HEARSAY EVIDENCE. Evidence of what others have been *heard* to say; testimony from the relation of third persons; second-hand, as distinguished from original evidence.* 1 *Greenl. Evid.* § 98.

The term *hearsay* evidence is used with reference both to that which is written, and to that which is spoken. But in its legal sense, it is confined to that kind of evidence which does not derive its effect solely from the credit to be attached to the witness himself, but rests also, in part, on the veracity and competency of some other person from whom the witness may have received his information. 1 *Phillipps on Ev.* 185.

HEARTH MONEY. A tax of two shillings upon every hearth in England, granted to the king by statutes 13 & 14 Car. II. c. 10. Abolished by statute 1 W. & M. st. 1, c. 10. 1 *Bl. Com.* 324, 125. See *Chimney Money, Fuage*.

H'EAS. The abbreviated form of writing *habeas*, in the old court hand, in the court of king's bench. *Towns. Pl.* 166.

HEBBERMAN. A kind of poacher, or unlawful catcher of fish on the river Thames. So called because they commonly fished at ebbing water. *Cowell. Blount.*

HEBBERTHEF. In Saxon law. The privilege of having the goods of a thief and the trial of him, within a certain liberty. *Cart. S. Edmundi MS.* fol. 163. *Cowell.*

HEBDOMADA. Lat. [from Gr. *ἑβδομας*.] A week; a space of seven days. *Hebdomadius*; a week's-man; the canon

or prebendary in a cathedral church, who had the peculiar care of the choir, and the offices of it for his own week. *Cowell.*

HEDA. L. Lat. In old English law. A port or haven. *Domesday. Spelman.* A hithe, wharf or landing place. *Id. Cartular. Abbatia de Radinges, MS.* fol. 5. *Cowell.*

HEDAGIUM. L. Lat. [from *heda*, q. v.] In old records. A toll or custom paid at a hithe, or wharf for landing goods. *Cartular. Abbatia de Radinges, MS.* fol. 7. *Cowell.*

HEDGE-BOTE. An allowance of wood for repairing hedges or fences, which a tenant or lessee has a right to take off the land let or demised to him. 2 *Bl. Com.* 35. Called *fence-bote*, in *Livingston v. Ten Broeck*, 16 *Johns. R.* 15.

HEIER. Sax. An heir. *Spelman.*

HEIMENIUM. L. Lat. A hayment, or hedge fence. *Blount.*

HEINFAR, Heinfare, Hainfar. Sax. [from *hein*, or *hine*, a servant, and *far*, or *fare*, a journey or passage.] In Saxon law. The departure, flight, escape or loss of a servant. *Spelman.*

A fine paid for killing a man. *Domesday. Spelman.*

The right of taking cognizance of such an offence. *Id. ibid.*

HEIR. [Sax. *heier*; L. Fr. *heire*; Lat. *hæres*.] One who, upon the death of another, acquires or succeeds to his estate by right of blood, and by operation of law.* The person who takes an estate in lands or tenements by descent from another, as distinguished from an *alienee*, who takes by deed, and a *devisee*, who takes by will.* He upon whom the law casts his ancestor's estate immediately on the death of the ancestor.* 2 *Bl. Com.* 201. He to whom lands, tenements or hereditaments, by the act of God and right of blood do descend, of some estate of inheritance. *Co. Litt.* 7 b.

HEIR APPARENT. An heir whose right of inheritance is indefeasible, provided he outlive the ancestor; as in England the eldest son, or his issue, who must, by the course of the common law, be heir to the father whenever he happens to die. 2 *Bl. Com.* 208. 1 *Steph. Com.* 358.

HEIR PRESUMPTIVE. The person who, if

the ancestor should die immediately would, in the present circumstances of things, be his heir; but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child. 2 *Bl. Com.* 208. 1 *Steph. Com.* 358.

HEIR AT LAW, OR HEIR GENERAL. He who, after his ancestor's death has a right to all his lands, tenements, and hereditaments. *Whishaw.* One to whom the law gives the inheritance, on account of his proximity of blood. 1 *Forbes' Inst.* part 3, p. 76.

HEIR SPECIAL. In English law. The issue in tail, who claims *per formam doni*; by the form of the gift.

HEIR BY CUSTOM. In English law. One whose right of inheritance depends upon a particular and local custom, such as *gavel-kind*, or *borough english*. *Co. Litt.* 140.

HEIR BY DEVISE. One to whom lands are devised by will; a devisee of lands. Answering to the *hæres factus*, (q. v.) of the civil law.

HEIR. In Scotch law. The person who succeeds to the heritage, or heritable rights of one deceased. 1 *Forbes' Inst.* part 3, p. 75. The word has a more extended signification than in English law, comprehending not only those who succeed to lands, but successors to personal property also. *Wharton's Lex.* Heirs are distinguished into various kinds, as

Heir institute. One to whom the right of succession is ascertained by disposition, or express deed of the deceased. 1 *Forbes' Inst.* *ub. sup.*

Heir at law. One to whom the law gives the inheritance, on account of his proximity of blood. *Id.* 76.

Heir of tailzie, in general. He on whom an estate is settled that would not have fallen to him by legal succession. *Id.* 75.

Heir male. An heir institute, who, though not next in blood to the deceased, is his nearest male relation that can succeed to him. *Id.* 76.

Heir of provision. One who succeeds as heir, by virtue of a particular provision in a deed or instrument. *Wharton's Lex.*

Heir substitute, in a bond. He to whom a bond is payable expressly in case of the creditor's decease, or after his death. 1 *Forbes' Inst.* part 3, p. 76.

Heir of line. One who succeeds lineally

by right of blood; one who succeeds to the deceased in his heritage; i. e. lands and other heritable rights derived to him by succession as heir to his predecessor. *Id.* 77.

Heir of conquest. One who succeeds to the deceased in *conquest*, i. e. lands or other heritable rights to which the deceased neither did or could succeed as heir to his predecessor. *Id.* *ib.*

Heir general. An heir who generally represents the deceased, and succeeds to every thing not specially provided to other heirs; another name for an heir at law. Called also *heir whatsoever*. *Id.* 76, 77.

HEIR-LOOM, Heir-lome. [from Sax. *heier*, heir, and *leoma*, a limb, or member; L. Lat. *hæreditarium, principalium*.] In English law. A personal chattel which goes by special custom to the heir, along with the inheritance, and not to the executor or administrator of the last proprietor. Literally, a limb or member of the inheritance. 1 *Williams on Exec.* 606. The old authorities generally confine the application of this term to articles of household furniture, or "dead chattels moveable." *Bro. Abr.* Discent, pl. 43. *Termes de la ley.* But Lord Coke mentions fish in a pond, deer in a park, and doves in a dove-house, as chattels which go with the inheritance. *Co. Litt.* 8 a. Spelman defines an heir-loom to be "any utensil of the stronger or more ponderous kind, which is not easily separated from a house, and therefore, by the custom of some places, passes to the heir as a member of the inheritance; (*omne utensile robustius quod ab ædibus non facile revellitur, ideoque ex more quorundam locorum ad hæredem transit tanquam membrum hæreditatis*.) And Blackstone observes that heir-looms are generally such things as cannot be taken away without damaging or dismembering the freehold. 2 *Bl. Com.* 427. But in modern law, they are clearly distinguished from fixtures. 1 *Williams on Exec.* 607. 2 *Kent's Com.* 343. Charters or deeds relating to the inheritance, are in the nature of heir-looms, and follow the land to which they relate. 1 *Williams' Ex.* 609. In the United States, heir-looms, as such, are for the most part unknown. 1 *Hilliard's Real Prop.* 50.

HEIRS. A word used in deeds of conveyance, (either solely, or in connexion with others,) where it is intended to pass a fee; as, "to —, and his heirs;" or, "to —, his heirs and assigns;" or, "to —, his heirs and assigns forever." At common

law, this is a necessary word of conveyance where the estate is to be created by deed. The limitation to the *heirs* must be made in direct terms, or by immediate reference, and no substituted words of perpetuity, except in special cases, will be allowed to supply their place, or make an estate of inheritance in feoffments and grants. *Litt. sect. 1.* 4 *Kent's Com.* 5. 2 *Bl. Com.* 107. 1 *Steph. Com.* 223. 2 *Crabb's Real Prop.* 12, § 955. Thus, if a man purchases lands "to himself forever," or "to him and to his assigns forever," he takes but an estate for life. Though the intent of the parties be ever so clearly expressed in the deed, a fee cannot pass without the word *heirs*. *Holt, C. J., 6 Mod. R.* 109. Even the word *heir*, in the singular, according to Lord Coke, is insufficient. *Co. Litt.* 8 b. 4 *Kent's Com.* 5, note. 1 *Hilliard's Real Prop.* 605, 606. The special cases which form exceptions to this rule are enumerated by Blackstone. 2 *Bl. Com.* 107, 108. And see 4 *Kent's Com.* 6, 7. In wills, a fee will pass without the word *heirs*, if the intention to pass a fee can be clearly ascertained from the will, or a fee be necessary to sustain the charge or trust created by the will. *Id. ibid.* 2 *Crabb's Real Prop.* 14, § 958.

In some of the United States, (as Virginia, Kentucky, Mississippi, Missouri, Alabama, and New-York,) the word *heirs*, or other words of inheritance, are no longer requisite to create or convey an estate in fee, either in grants or devises of lands. In other states, (as New-Jersey, North Carolina, and Tennessee,) the provision is confined to wills. See 4 *Kent's Com.* 7, 8, and notes. 1 *Hilliard's Real Prop.* 609.

"HEIRS," in a will, is sometimes construed to mean "children." 2 *Jarman on Wills*, 23, (16, Perkins' ed.) 2 *Story's Eq. Jur.* § 1065 b.

HENGHAM. The reputed author of a Latin treatise in two parts, entitled *Summa Magna* and *Summa Parva*, (great and small *sum*, or summary,) which Mr. Reeves calls a collection of notes relating to proceedings in actions. It is said to have been translated into English in the time of Edward II. or Edward III., and was published by Mr. Selden with some original notes of his own. Ralph de Hengham, the author, was Chief Justice of the King's Bench in the reign of Edward I., but was, for misconduct, degraded from his office, with many other justices of the period, and heavily fined. 2 *Reeves' Hist.* 281. *Crabb's*

Hist. 199. *Bridgeman's Leg. Bibliog. Spelman*, voc. *Justitia*.

HENGHEN. [Sax. *hengcen*, *hengenne*.] In old English law. A prison, a place of confinement, (*carcer*;) a house of correction, (*ergastulum*.) *Ponatur in hengen, et ibi sustineat. LL. Hen. I. c. 65. Thonna gebuga he hengen & thære abid. LL. Canut. c. 32.* He shall be put into prison, and there abide, &c. *Spelman*.

HENRICUS VETUS. L. Lat. Henry the old, or elder. King Henry I. is so called in ancient English chronicles and charters, to distinguish him from the subsequent kings of that name. *Spelman*.

HEPTARCHY. [from Gr. *ἑπτὰ*, seven, and *ἀρχή*, government.] The name usually given to the seven kingdoms of Kent, Sussex, Essex, Wesser, East Anglia, Mercia, and Northumberland, established by the Saxons on their settlement in Britain. 4 *Bl. Com.* 410. According to some, eight kingdoms were established, to which the name of *octarchy* has been given. 1 *Spence's Chancery*, 4, c. 1.

HERALD. [L. Lat. *heraldus*, *heroldus*; L. Fr. *herhault*, *heraud*, *heroud*, *haraz*, of uncertain etymology.] An officer at arms in England, whose duties, in modern times, principally relate to the superintendence and management of public pageants and solemnities, as coronations, royal marriages, funerals, &c., and the preservation of genealogies and coat armour. See *Heralds' College*.

HERALDS' COLLEGE, (or COLLEGE OF ARMS.) An ancient royal corporation in England, instituted in the first year of the reign of Richard III. A. D. 1483; consisting of three kings of arms, six heralds and four pursuivants, together with the earl marshal of England and a secretary. The records of this college contain abundant sources of genealogical evidence. See these enumerated in *Hubback's Evidence of Succession*, 538—566.

HERBAGE. L. Fr. & Eng. [L. Lat. *herbagium*.] The produce or vesture of land which is fed upon by cattle, (*vestura terra quæ dentibus animalium decerpitur*.) *Spelman*, voc. *Herbagium*.

The right or liberty of feeding cattle in another's ground, as in forests. *Id.* 1 *Chitt. Gen. Pr.* 181. *Blount*.

HERBAGIUM. L. Lat. In old re-

cords. *Herbage*; the right to herbage. *Spelman*. *Liberum herbagium*; free herbage. *Blount*, voc. *Herbage*. *Herbagium anterius*; the first crop of grass or hay, in opposition to aftermath and second cutting. *Kennett's Paroch. Antiq.* 459. *Cowell*.

HERBERGARE, *Herbigare*. L. Lat. In old English law. To harbour; to entertain. *Cowell*. *Herbergatus*; entertained; spent at an inn. *Blount*. *Ad herbigandum*. *Cowell*. See *Heribergare*. *Herbergagium*. A lodging for guests. *Blount*.

HERBERGER. L. Fr. To lodge. *Et que tiels ne se herbergent trope sovent en un lieu*; and that such do not lodge too often in one place. *Artic. sup. Chart.* c. 13.

To entertain. *Son hoste que il avera herberge plus de deux nuytz ensemble*; his guest whom he shall have entertained more than two nights together. *Britt.* c. 12.

HERCIA. L. Lat. A harrow. *Fleta*, lib. 2, c. 77.

HERCIARE. L. Lat. [Fr. *hercer*.] In old English law. To harrow. *Arabant et herciebant ad curiam domini*; they ploughed and harrowed at the lord's manor. 4 *Inst.* 270. See *Arabant*.

HERCISCERE, *Erciscere*. L. Lat. To divide or partition. The more common form is *erciscere*, (q. v.)

HERCISCUNDA, *Erciscunda*. Lat. [particip. of *herciscere*, q. v.] In the civil law. To be divided. *Familia herciscunda*; an inheritance to be divided. *Actio familiæ herciscundæ*; an action for dividing an inheritance. *Erciscunda* is more commonly used in the civil law. *Dig.* 10. 2. *Inst.* 3. 28. 4. *Id.* 4. 6. 20. *Id.* 4. 17. 4. *Herciscunda* is used by Bracton. *Bract.* fol. 443 b. This is translated in Britton by the barbarous and unmeaning word *herdescumbe*. *Britt.* c. 71, (fol. 183 b, Wingate's ed.) The whole phrase, *actio familiæ herciscundæ*, is unintelligibly rendered in the same passage, "*accion de la mone dame de herdescumbe*," which Wingate proposes to amend by reading "*accion de la meine la Dame de Hertescombe*." (!)

In a note by Wenck to the German edition of Gibbon's *Decline and Fall of the Roman Empire*, (c. 44,) it is said that this word has never existed, and that Cujacius is the author of it, who read the words *terris condi* in Servius *ad Virg.*, *herciscundi*. *Erciscunda*, however, which is essen-

tially the same word, not only occurs repeatedly in the text of the civil law, but is used by Cicero himself, and may be traced to the XII Tables. *Cic. De Orat.* i. 58.

HERDEWICH, *Herdewic*, *Hardewice*. [from Sax. *herd*, a herd, and *wice*, a place or habitation.] In old English law. A grange, or place for cattle and husbandry. *Blount*. 3 *Mon. Angl.* cited *ibid*.

A herdsman's village. *Domesday*. *Cowell*, voc. *Herdwice*.

HERDWERCH, *Heordwerch*. Sax. In old records. Herdsman's work, or customary labors done by shepherds, herdsman, and other inferior tenants, at the will of their lord. *Regist. Eccl. Christ. Cant.* MS. A. D. 1166. *Cowell*.

HERE, *Herge*. Sax. An army, (*exercitus*.) *Spelman*.

An assemblage of more than thirty-five persons. *LL. Inæ*, c. 13. See *Hloth*.

Weapons and habiliments of war. *Lambard*, *apud Spelman*, voc. *Hereotum*.

HEREBANNUM, *Heribannum*, *Hari-bannum*, *Arribannum*. L. Lat. [from Sax. *here*, an army, and *bannum*, an edict, proclamation, fine.] In early European law. The calling out of an army by proclamation, (*indictio exercitus*.) *Spelman*. See *Aribannum*.

A fine for not joining the army when summoned, (*multa non ambulantis in exercitum evocati*.) *Capitul. Caroli* lib. 3. c. 67. *Spelman*. *LL. Longob.* lib. 1. tit. 14, § 13. 1 *Robertson's Charles V.* Appendix, Note viii. This was imposed upon the *liberi homines*, or freemen. *Id. ibid*.

A tribute or subsidy paid for the support of an army, (Sax. *heregeld*.) *Spelman*.

HEREDITAGIUM. L. Lat. In Sicilian and Neapolitan law. That which is held by hereditary right; the same with *hereditamentum* (*hereditament*) in English law. *Const. Sicul.* lib. 3. tit. 15. *Spelman*.

HEREDITAMENT. [L. Lat. *hereditamentum*.] That which may be inherited; every thing which passes to the heir by hereditary right, (*omne quod jure hæreditario ad hæredem transeat*.) *Spelman*, voc. *Hæreditamentum*. This is by far the largest and most comprehensive expression by which things real can be described, as it includes not only lands and tenements, but whatsoever may be inherited, be it corporeal or incorporeal, real, personal, or mixed. *Co. Litt.* 6 a. *Shep. Touch.* 91.

2 *Bl. Com.* 17. Thus, an heirloom, or implement of furniture which by custom descends to the heir, together with a house, is neither land nor tenement, but a mere moveable, yet, being inheritable, is comprised under the general word *hereditament*; and so a condition, the benefit of which may descend to a man from his ancestor, is also an hereditament. *Id. ibid.* 3 *Co.* 2 b, *Winchester's Case*. *Hereditament* is a word almost as comprehensive as property. 3 *Kent's Com.* 401. And it is under this term that the subjects of real property have been usually arranged; being divided into *corporeal* and *incorporeal*. 1 *Steph. Com.* 159. 1 *Crabb's Real Prop.* 2. See *Corporeal hereditaments, Incorporeal hereditaments*.

HEREF'. The abbreviation of *Herefordshire*, in old English pleadings and records. *Towns. Pl.* 147.

HEREFARE. Sax. [from *here*, an army, and *fare*, a going.] A going into, or with an army; a going out to war, (*profectio militaris*;) an expedition. *Spelman*.

HEREGEAT. Sax. [from *here*, an army.] In old English law. A heriot. *LL. Canuti*, par. 1, c. 69. *Spelman*. See *Heriot*.

HEREGELD. Sax. [from *here*, an army, and *geld*, a payment.] In old English law. A tribute or tax levied for the maintenance of an army. *Spelman*. See *Heregeld*.

HEREOTUM, *Heriotum*, *Hariotum*. L. Lat. A heriot, or hereot. *Spelman*. See *Heriot*. Bracton uses *herietum*. (q. v.)

HERES. Lat. An heir. A form of *haeres*, very common in the civil law.

HERESY. [from Gr. *ἡρesis*, a choice.] In English law. An offence against religion, consisting not in a total denial of christianity, but of some of its essential doctrines, publicly and obstinately avowed. 4 *Bl. Com.* 44, 45. Defined by Sir Matthew Hale, *sententia rerum divinarum humano sensu excogitata, palam docta, et pertinaciter defensa*; an opinion on divine subjects devised by human reason, openly taught, and obstinately maintained. 1 *Hal. P. C.* 384. This offence is now subject only to ecclesiastical correction, and is no longer punishable by the secular law. 4 *Steph. Com.* 233.

HERETOCH. [Sax. *heretoga*, from *here*, an army, and *toga*, to lead; L. Lat. *heretochius*.] In Saxon law. A leader or commander of an army, on land or at sea, (*ductor exercitus, sive navalis sive terrestris*;) a constable, or marshal. *Spelman*, voc. *Heretochius*.

A duke, (*dux*, a leader.) 1 *Bl. Com.* 397. Supposed to have been the title of the ancient English earl, in his military capacity. *Crabb's Hist. Eng. Law*, 17.

HERETUM. L. Lat. [from Sax. *here*, an army.] In old records. A court or yard for drawing up guards, or military retinue. *Cowell*.

HEREZELD. [from Germ. *herr*, lord, and Scot. *zeld*, a gift.] In Scotch law. A gift or present made or left by a tenant to his lord as a token of reverence. *Skene apud Spelman*, voc. *Herezelda*. *Spelman* thinks it to be a form of *heregeld*, (q. v.) A heriot. *Id.*

HERIBANNUM. See *Herebannum*.

HERIBERGARE. L. Lat. [from Sax. *here*, an army, and *bergian*, to protect or defend.] In old European law. To pitch a camp; to receive or put an army in a safe place. *Spelman*.

To receive an individual under one's protection; to receive or entertain a traveller, (*hospitari*.) *Id.*

HERIBERGUM. L. Lat. [See *Heribergare*.] In early European law. A fortified camp; a place for the safe reception of an army. *Spelman*.

Any place of reception or entertainment; an inn, (*hospitium*.) *Id.*

HERIETTUM. L. Lat. In old English law. A heriot. *Bract.* fol. 84, 86. *Fleta*, lib. 3, c. 18. *Dyer*, 199 b. See *Heriot*.

HERIOT, *Hariot*, *Herioth*, *Hereot*. [L. Lat. *heriotum*, *hereotum*, *hariotum*, *herietum*; Sax. *heregeat*, from *here*, an army, and *geat*, an expedition.] In Saxon law. A payment or tribute in arms, or military accoutrements, (*militaris suppellectilis præstatio*;) made or due to the lord, on the death of a tenant. *Spelman*, voc. *Hereotum*. *Lambard, ibid.* Called also *exercitiale*, (from *exercitus*, an army.) *Cowell*, voc. *Exercitiale*. Thus, by the laws of Canute, the heriot of an earl was fixed at eight horses, four with trappings and four without; four helmets, four coats of mail,

eight spears, and as many shields, four swords, and two hundred pieces of gold. *LL. Saz. Canuti*, par. 1, c. 69. These were compulsory heriots. 2 *Bl. Com.* 423.

In early English law. A gift or legacy made by a tenant to his lord, at his death, of his best or second best beast, according to custom. *Bract.* fol. 86. This, according to Bracton, was done as a mark of respect to the lord, and was a matter of favor rather than of right. *Bract. ub. sup.* And yet, in another passage he observes that where a freeman died suddenly and without a will, his lord was entitled to his heriot. *Id.* fol. 60 b. Which shows that the heriot had become at that early period a customary tribute. 2 *Bl. Com.* 423, 424.

In modern English law. A customary tribute of goods and chattels, payable to the lord of the fee on the decease of the owner of the land. 2 *Bl. Com.* 422. See 16 *Mees. & W.* 1. This, (which is otherwise called *heriot custom*,) is now confined for the most part to copyhold tenures, and is sometimes the best live beast, or *averium*, which the tenant dies possessed of, sometimes the best inanimate good, under which a jewel or piece of plate may be included, but it is always a *personal* chattel, which immediately on the death of the tenant who was the owner of it, being ascertained by the option of the lord, becomes vested in him as his property. 2 *Bl. Com.* 423, 424. 2 *Steph. Com.* 48, 49. 1 *Crabb's Real Prop.* 632, § 809, *et seq.* This custom, Mr. Stephen observes, is now justly considered as one of the most oppressive circumstances which attend the modern law of tenures. 1 *Steph. Com.* 210.

HERIOTH. A heriot. *Bract.* fol. 60 b.

HERIREITA. L. Lat. [from Sax. *here*, an army, and *ryt*, a band.] In old European law. A military band or company. *L. Boior.* tit. 3, c. 8, § 1. *Spelman.*

HERISLIT, *Herisliz*, *Herislitz*. [from Sax. *here*, an army, and *slit*, or *slice*, a breaking, or severing.] In old European law. A breaking off or separation from an army, (*diruptio exercitus*;) the crime of deserting from an army. *Spelman.*

HERISTAL. [from Sax. *here*, an army, and *stal*, a station; L. Lat. *heristallus*.] The station of an army; the place where a camp is pitched. *Spelman.*

HERITABLE. In Scotch law. That which may be inherited; that which goes to the heir, and not to the executor; the opposite of moveable.* See *infra*.

HERITABLE BOND. In Scotch law. A bond accompanied by a conveyance of land, to be held as a security for debt. *Jacob.*

HERITABLE JURISDICTIONS. In Scotch law. Grants of criminal jurisdiction formerly bestowed on great families in Scotland, to facilitate the administration of justice. *Dalrymple on Feuds*, 292. *Whishaw.* Abolished in effect by stat. 20 Geo. II. c. 50. *Tomlins.*

HERITABLE RIGHTS. In Scotch law. Rights of the heir; rights to land, or whatever may be intimately connected with land; answering to the *reality* of the English law. *Jacob. Whishaw.*

HERITOR. In Scotch law. A proprietor of land. 1 *Kames' Equity*, pref.

HERMAPHRODITE. [Lat. *hermaphroditus*.] A person of doubtful sex, or one supposed to possess the characteristics of both sexes.

Hermaphroditus tam masculo quam femina comparatur, secundum prevaletentiam sexus incalescentis. An hermaphrodite is to be considered male or female according to the predominance of the exciting sex. *Co. Litt.* 8. *Bract.* fol. 5.

HERMOGENIAN CODE. See *Codex Hermogenianus*.

HERNESIUM, *Hernasium*. L. Lat. [from Teut. *harnas*, harness.] In old English law. The furniture of a house or table. *Girald. Cambr. apud Wharton. Angl. Sac. Cowell.*

The tackle or rigging of a ship. *Plac. Parl.* 22 *Edu.* I. *Cowell. Blount.*

HEROUD, *Heraud*. L. Fr. A herald. *Spelman*, voc. *Heraldus*.

HERPEX. Lat. A harrow. *Spelman.*

HERPICATIO. L. Lat. [from *herpez*, q. v.] In old English law. A day's work with a harrow. *Spelman.*

HERPSAC. Sax. A place of immunity. *Blount*, voc. *Frodmortel*.

HERSCHILDT. Sax. [from *her*, an army, and *schildt*, a shield.] In Saxon law. Military service; scutage. *Spelman.*

HERTESCUMBE. A word used in Britton (c. 71,) to express the Lat. *hercis-*

cunda, the meaning of which was obviously not understood. This goes to show that the ignorance of the civil law, to which Blackstone alludes in the introduction to his Commentaries, had begun to prevail in England as early as the time of Edward I. 1 *Bl. Com.* 22.

HERUS. Lat. A master. *Servus facit ut herus det*; the servant does [the work] in order that the master may give, [him the wages agreed on.] 2 *Bl. Com.* 445. *Herus dat ut servus facit*; the master gives [or agrees to give, the wages,] in consideration of, or with a view to the servant's doing [the work.] *Id. ibid.*

HEST CORN. In old records. Corn or grain given or devoted to religious persons or purposes. 2 *Mon. Angl.* 367 b. *Cowell.*

H'ET. An abbreviation for *habet* in old records. *Towns. Pl.* 167.

HETÆRIA. Lat. In the Roman law. A company, society or college. *Plin. Epist.* x. 43, 94.

HEYARE. L. Lat. In old English law. To make a hedge. *Si heyaverit vel fossatum fecerit*; if he have made a hedge or ditch. *Bract.* fol. 159 b.

HEYBOTE, *Haybote*. [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance or consideration.] In English law. A liberty granted to a tenant, of cutting as much underwood and bushes on the premises, as was necessary for mending and maintaining the fences or hedges. *Kennett's Paroch. Ant.* 209. *Cowell. Libertas habendi rationabile estoverium in bosco patroni, sicut ad housbote et heybote, et ad arandum et hujusmodi*; a liberty of having a reasonable estover in the wood of the patron, as for housebote and heybote, and for burning, [fire bote,] and the like. *Bract.* fol. 408.

HEYLODE. In old records. A customary burden upon inferior tenants, for mending or repairing hays or hedges. *Cowell.*

HEYWARD. [from Sax. *hig*, grass, or *heg*, a hedge, and *weard*, a keeper.] In English law. One who takes care of the pasturing of animals, (*rei pascuæ curator*;) a herdsman. *Spelman.* The same probably as *hayward*, (q. v.)

HIDA, *Hyda*. L. Lat. In old English

law. A hide; a portion or measure of land. *Spelman.* See *Hide*.

HIDAGE, *Hydage*. [L. Lat. *hidagium*, q. v.] In old English law. An extraordinary tax payable to the king for every *hide* of land; otherwise called *hidegild*. *Spelman*, voc. *Hida*. See *Hide*. In raising taxes it was an ancient custom to describe the kingdom by *hides*; which *Spelman* thinks was introduced by king Ethelred, A. D. 1008. William the Conqueror took from every hide in England six shillings; and William Rufus, four shillings. *Florent. Wigorn.* in an. 1084. *Mat. Par.* in an. 1083. *LL. Edw. Conf.* c. 11. *Spelman.* Bracton mentions *hidages* among those common payments which are not called *services*, nor arise from custom, unless some necessity intervenes, or when the king comes. *Bract.* fol. 37.

The privilege of being quit or exempt from the tax called *hidage*. *Termes de la ley.*

HIDAGIUM. L. Lat. [from *hida*, q. v.] *Hidage*. *Bract.* fol. 37. See *Hidage*.

HIDARE. L. Lat. [from *hida*, q. v.] In old English law. To tax or assess land by *hides*. *Spelman*, voc. *Hida*. *Hidatus*; taxed. *Id. ibid.*

HIDE, *Hyde*. [Sax. *hyd*, from *hyden*, to cover, or hide: L. Lat. *hida*, *hyda*; Scot. *hilda*.] In old English law. A house or dwelling; a mansion or manse; answering to the Latin *tectum*, a thing covered, or roofed. *Spelman*, voc. *Hida*. Called by the writers of the middle ages, *mansum* and *mansio*. *Id.*

A portion of land sufficient for the support of one family; called by Bede *familia*; including a house or *hide*, and lands belonging to it, called *hydelandes*. *Spelman.*

A quantity of land sufficient for the working of one plough for a year, (*portio terræ ad unius aratri pensum annum sufficiens*;) or as much as could be plowed with one plough in a year; a ploughland. *Spelman*, voc. *Hida*. *Henric. Huntington, Hist.* lib. 6, fol. 208 b. *Co. Litt.* 5 a. Called also *carucata terræ*, (q. v.) *Id. ibid.* The quantity of land contained in a hide is uncertain. According to Gervase of Tilbury, who is followed by Crompton, it originally consisted of one hundred acres. *Crompt. Jur.* fol. 220, 222. *Spelman, ub. supra. Cowell.* Lord Coke observes that it does not contain any certain number of acres. *Co. Litt.* 69 a. The division of Eng-

land into *hides* is of great antiquity, occurring as early as the time of king Ina. *Spelman, ub. sup.*

HIDE, (or HYDE) AND GAIN. In English law. A term anciently applied to arable land. *Co. Litt.* 85 b. See *Gain*.

HIDE LANDS. [Sax. *hydelandes*.] In Saxon law. Lands belonging to a *hide*, that is, a house or mansion. *Spelman, voc. Hida*.

HIDEL. In old English law. A place of protection; a sanctuary. *Stat. 1 Hen. VII. c. 5, 6. Cowell.*

HIGH. [Lat. *altus, alta, altum*; L. Fr. *haut, halt*.] Open; common; public; as the *high sea*, a *high way*, (qq. v.)

Elevated in station, dignity or importance; as a *high court*. Head, or chief; as *high admiral*, *high constable*, *high sheriff*.

Elevated or prominent in a bad sense; aggravated; atrocious; as a *high crime*, *high treason*.

HIGH COMMISSION COURT. A court of ecclesiastical jurisdiction in England, erected and united to the regal power by virtue of the statute 1 Eliz. c. 1; which, from the abuses of its powers, was abolished by statute 16 Car. 1, c. 11. 3 *Bl. Com.* 67.

HIGH CONSTABLE. In English law. A ministerial officer of justice, otherwise called *chief constable*, and constable of the hundred, whose proper duty is to keep the king's peace within the hundred, as the petty constable does within the parish or township. 3 *Steph. Com.* 46, 47. See *Constable*.

HIGH JUSTICE. In feudal law. The jurisdiction or right of trying crimes of every kind, even the highest. This was a privilege claimed and exercised by the great lords or barons of the middle ages. 1 *Robertson's Charles V.*, Appendix, Note xxiii.

HIGH SEAS, (more correctly, HIGH SEA.) [Lat. *altum mare*; L. Fr. *le hault meer*.] The open ocean outside of the *faucēs terræ*, as distinguished from arms of the sea; the waters of the ocean without the boundary of any county. 1 *Kent's Com.* 367 and note. 5 *Mason's R.* 290. 1 *Story's R.* 259. See *Faucēs terræ*.

Any waters on the sea coast which

are without the boundaries of low water mark. 1 *Gallison's R.* 624. 5 *Wheaton's R.* 184. The high or main sea properly begins at low water mark. *Story, J.*, 2 *Gall. R.* 398, 428. See 1 *Kent's Com.* 367, note. 5 *Howard's R.* 453, 462.

HIGH TREASON. [L. Lat. *alta proditio*; L. Fr. *graund treson*.] In English law. Treason against the king or sovereign, as distinguished from petit or petty treason which might formerly be committed against a subject. 4 *Bl. Com.* 74, 75. The crime of petit treason having been recently abolished, the correlative term *high* has lost its significance, and is accordingly omitted by Mr. Stephen in his *New Commentaries*. 4 *Steph. Com.* 183, 184, note. See *Treason*, *Petit Treason*.

HIGHWAY. [L. Lat. *alta via*; L. Fr. *le haut chemin*; *le hault strete*.] A public way or road; a way or passage open to all; * a way over which the public at large have a right of passage. *Brande*. Every thoroughfare which is used by the public, and is, in the language of the English books, "common to all the king's subjects," is a *highway*, whether it be a carriage-way, a horse-way, a foot-way or a navigable river. 3 *Kent's Com.* 432. The word *highway* is the genus of all public ways. *Holt, C. J.*, 6 *Mod.* 255. A distinction is made by Blackstone between the *king's highway*, leading from town to town, and a *common way* leading from a village into the fields. 2 *Bl. Com.* 32. This distinction has been formally adopted by Mr. Crabb, who defines a highway, "a way to a market, or a great road, &c. common to all passengers, or, more properly speaking, a public passage for the Queen and all her subjects, whence called by distinction the "Queen's highway;" adding that "whether it leads to a market-town or not, it is a highway if common to all the people." 1 *Crabb's Real Prop.* 99, 100, § 102. Mr. Serjeant Stephen has not adopted the distinction above referred to, though he distinguishes between highways and turnpike roads. 3 *Steph. Com.* 257, 259, 261, 266. See *Turnpike*. A highway is an easement. 1 *Conn. R.* 103, 132. See 2 *Smith's Lead. Cas.* 94, note, and Am. ed. note.

HIGHWAY ACT. In English law. The statute of 5 & 6 Will. IV. c. 50. 3 *Steph. Com.* 258.

HIIS (or HIJS) TESTIBUS. L. Lat. (These being witnesses.) The name of the

concluding or attestation clause in ancient deeds and charters, which contained the names of the witnesses; so called from the words with which it commenced. The whole clause ran thus: *Hijis testibus, Johanne Moore, Jacobo Smith; et aliis ad hanc rem convocatis*; these being witnesses, John Moore, James Smith, and others assembled for this purpose. 2 *Bl. Com.* 307. *Co. Litt.* 6 a, 7. The names of the witnesses were written by the clerk who drew the deed, and not by the witnesses themselves, who very often could not write. 1 *Reeves' Hist. Eng. Law*, 89. Tindal, C. J., 6 *Man. & Gr.* 457. *Magna Charta* concludes with a clause of this kind, and so did all royal grants and charters until the reign of Richard the second, when the clause *Teste meipso* was introduced in its place. 2 *Bl. Com.* 308. *Crabb's Hist.* 150, 151. 2 *Inst.* 78. The clause of *hijis testibus* in the deeds of subjects was not entirely discontinued until the reign of Henry VIII. 2 *Bl. Com.* *ub. sup.*

HIKENILD STREET. One of the four great Roman roads of Britain. *LL. Edw. Conf.* c. 12. More commonly called Ikenild Street, (q. v.)

HILARY TERM. One of the four terms of the English courts of common law, beginning on the 11th and ending on the 31st of January in each year. *Stat. 11 Geo. IV. & 1 Will. IV. c. 70.* 3 *Steph. Com.* 561. It formerly began on the 23d January, and ended on the 12th February; and derives its name from St. Hilary's day, which immediately preceded its commencement. *Id. ibid.* 3 *Bl. Com.* 277.

HINE, Hein. Sax. In old English law. A servant or domestic; properly a servant at husbandry. *Cowell.*

HINFANGTHEFE. This word occurs in Bracton (fol. 122 b) but in another passage is written *infangenthesf, infangethesf*, which is the ordinary form. *Id.* fol. 154 b. See *Infangthefe*.

HIRCISCUNDA. See *Herciscunda*.

HIRST, Hurst. In old English law. A wood. *Co. Litt.* 4 b.

HITHE. See *Hyth*.

HLAFORD. Sax. A lord. 1 *Spence's Chancery*, 36.

HLAFORDSWICE. Sax. In Saxon law. The crime of betraying one's lord, (*proditio domini*;) treason. *Crabb's Hist. Eng. Law*, 59, 301.

HLOTH, Hlode. Sax. In Saxon law. An unlawful company or assembly of men (*turma illegitima*), numbering from seven to thirty-five. *LL. Ina, MSS.* c. 18. *Spelman.*

HLOTHBOTE. Sax. [from *hloth*, a company, and *bote*, a fine.] In Saxon law. A fine for being present at an unlawful assembly. *LL. Alured. MSS.* c. 26. *Spelman.*

HOASTMEN. In English law. An ancient gild or fraternity at New-Castle-upon-Tyne, who dealt in sea coal. *Stat. 21 Jac. I. c. 3.*

HOC PARATUS EST VERIFICARE. See *Et hoc paratus, &c.*

HOC QUIDEM PERQUAM DURUM EST, SED ITA LEX SCRIPTA EST. Lat. (This indeed is exceedingly hard, but so the law is written; such is the written or positive law.) An observation quoted by Blackstone as used by Ulpian in the civil law; and applied to cases where courts of equity have no power to abate the rigor of the law. *Dig.* 40. 9. 12. 1. 3 *Bl. Com.* 430. The text of the Digests reads, "*quod quidem perquam,*" &c.

HOC VOBIS OSTENDIT. L. Lat. [*L. Fr. ceo vous monstre.*] (This shows to you.) The form in which the plaintiff's count (or *intentio*), in real actions commenced in the time of Bracton. *Hoc ostendit vobis A. quod B. injuste ei deforciat, &c.*; this shows A. to you that B. unjustly deforces him, &c. *Bract. fol. 372 b. Id. fol. 296 b.* 1 *Reeves' Hist. Eng. Law*. 427.

HOGA, Hogum. L. Lat. In old English law. A hill or mountain; in old English, a *how*. *Grene hoga*; *Grenehow. Domesday. Spelman.*

HOGHENEHYNE, Hogenehyne, Agenhine, Homehyne. Sax. [from *hogh*, a house, and *hine*, a servant.] A domestic servant; one of the household or family. A name given in the old Saxon laws to one who was entertained in another's house, on the third night of his stay; the head of the family being in such case answerable for his conduct as for his own domestic

servant. On the first night he was called *uncuth*, (unknown, or a stranger;) on the second night *gust*, (guest;) on the third night *hogenehyns*. *Bract.* fol. 124 b. *Britt.* c. 12. In the Saxon laws, the word is written *agen hyne*, pronounced *awn hine*. *Frum night uncuth, twa night gest, thrid night agen hine.* *LL. Edw. Conf.* c. 17. Spelman defines the word under *homehine*. Cowell and some others make *third night* a part of the appellation, which is clearly an error.

To HOLD. [Lat. *tenere*; L. Fr. *tener*.] To bind; to be of legal force or efficacy. See *Tenere*.

To judge or deem; to be of opinion; to decide. "The court held," &c. See *Tenere*.

To be the grantee or tenant of another; to take or have an estate from another. Properly, to have an estate on condition of paying rent, or performing service. See *Tenere, Tenendum, Tenure, Tenant*.

To have in possession; to possess. See *Holder, Tenant*.

To HOLD PLEAS. [L. Lat. *tenere placita*; *ad tenenda placita*.] To have cognizance or jurisdiction of actions. 3 *Bl. Com.* 35, 298.

To hold courts, or hear causes. *Reg. Orig.* 68 b.

HOLDER. [Fr. *porteur*.] In mercantile law. The person having [rightfully] in possession a bill of exchange, promissory note or check, whether as payee, indorsee or otherwise.* *Story on Bills*, § 12. Called sometimes *bearer*. *Chitty on Bills*, 26, 27.

HOLDES. Sax. In Saxon law. A military commander. *Spelman*.

HOLIDAY. See *Dies non juridicus*.

HOLM. [L. Lat. *hulmus*.] An island in a river (*insula amnica*), or the sea, (*marina*.) *Spelman*, voc. *Hulmus*. *Co. Litt.* 5 a. *Blount*.

Plain grassy ground upon water sides or in the water. *Blount*. *Camden*, cited *ibid*. Low ground intersected with streams. *Spelman*.

HOLOGRAPH. [Græco-Lat. *holographum*; Gr. *ῥογραφον*, from *ῥος*, all, and *γράφειν*, to write.] A will written entirely by the hand of the testator. *Calv. Lex. Jur.* 1 *Jarman on Wills*, 135, (Perkins' ed.) Called in French *olo-*

graph, (*le testament olograph*.) *Civ. Code of Louis. Art.* 1581.

Any writing, document or memorandum wholly in the handwriting of a party. *Bell's Contr. of Sale*, 64. *Best on Evid.* 256, § 210.

HOLT. Sax. In old English law. A wood or grove. *Spelman*. *Cowell. Co. Litt.* 4 b.

HOLY ORDERS. [Lat. *sacri ordines*.] In ecclesiastical law. The orders of bishops (including archbishops) priests and deacons, in the church of England. 3 *Steph. Com.* 55. 1 *Wooddes. Lect.* 174. The Roman canonists had the orders of bishop (in which the pope and archbishops were included,) priest, deacon, subdeacon, psalmist, acolythe, exorcist, reader, ostiarius. *Corv. Jus Canon.* 38, 39. *Gibbs. Cod.* 115. 1 *Wooddes. Lect.* 174, note.

HOMAGE. Fr. and Eng. [L. Lat. *homagium* and *hominium*; from *homo*, (Fr. *home*), a man, or vassal.] In feudal law. A ceremony or service which every tenant was bound to perform to his lord, on receiving investiture of a fee, or coming to it by succession as heir, in acknowledgment of the tenure. *Glanv.* lib. 9, c. 1. *Bract.* fol. 77 b. 78, 79, 80. It was properly incident to the tenure by knight-service, and is called by Littleton the most honorable service, and the most humble service of reverence, that a free tenant could do to his lord. *Litt.* sect. 85. It was performed by the tenant kneeling, bare headed and ungirt, holding both his hands together between those of his lord, who sat before him, and repeating the following form of words: "I become your man, from this day forth, of life, of limb, and of worldly honor [or earthly worship]; and unto you shall be true and faithful, and will bear you faith for the lands which I hold of you, saving the faith I owe to our sovereign lord the king." *Stat.* 17 *Edw.* II. st. 2. The lord then gave the tenant a kiss, and the latter standing up then made the oath of fealty. *Litt.* sect. 85. *Bract.* fol. 80. *Spelman*. 2 *Bl. Com.* 54. See *Homagium, Homo*.

The above mentioned formula of homage was prescribed by the statute 17 *Edw.* II. The older form given by Bracton is in somewhat different language, though both commenced with the same words: *Devenio vestre homo*; (L. Fr. *jeo deveigne vostre home*), from which the term *homage* itself is derived. *Bract.* fol. 80. *Britt.* c. 68.

Co. Litt. 64 b. See *Devenio*. That homage was much more than a mere ceremony, is clear from Bracton's definition of it, (see *Homagium*.) who also observes that the putting of the tenant's hands between those of the lord denoted, on the part of the lord, protection, defence, and warranty, and on the part of the tenant, reverence and subjection. *Bract.* fol. 80. Homage is now commonly regarded in the light of an abject and servile ceremony, importing a degree of humiliation on the part of the tenant degrading to the character of a freeman. There was one part of the ceremonial, however, which places it in a somewhat less odious light. At the conclusion of the homage, the lord was bound to kiss the tenant, and this, according to Britton, could never be dispensed with, whoever the lord might be; whether the king himself or any other, whether male or female, clerk or layman, old or young; and whoever the tenant might be, poor or rich, healthy or sick, ugly or fair (*pours ou ryche, lede ou bele*.) *Britt.* c. 68. In the reign of Henry VI. a special act of parliament was passed, to excuse the kissing in the case of homage made to the king, by reason of pestilence. *Rot. Parl.* 18 Hen. VI. n. 58. *Hal. MSS.*

HOMAGE ANCESTREL, (or **AUNCESTREL**.) L. Fr. In old English law. A species of tenure, where a man and his ancestors had immemorially holden land of another and his ancestors by the service of homage. *Litt.* sect. 143. 2 *Bl. Com.* 300. This bound the lord to warranty, in the ancient sense of homage. *Id. ibid.* *Hargr. Co. Litt.* Note 12, lib. 2. See *Homagium*.

HOMAGE JURY. In English law. The jury in a court baron; so called, because it most commonly consisted of such as owed homage to the lord of the fee. *Cowell.* See *Homagium*. Otherwise called *pares curiæ*, peers of the court. 2 *Bl. Com.* 54, 366.

HOMAGE LIEGE. See *Homagium ligium*.

HOMAGER. In English law. One that does, or is bound to do homage. *Cowell.*

HOMAGIUM. L. Lat. [quasi *hominis agium*; the tenant promising to be his lord's man; *se domini hominem acturum*. *Spelman.*] In feudal law. Homage. Called also anciently, *hominium*, *hominatio*, *hominiscum*, and *hominiscatus*.

hominium, according to Spelman, was the most ancient form. Lord Coke says it is called in English *manhood*, and that manhood and homage is all one. *Co. Litt.* 64 b.

Homagium est juris vinculum quo quis tenetur et astringitur ad warrantizandum, defendendum et acquietandum tenentem suum in seysina sua versus omnes, per certum servitium in donatione nominatum et expressum, et etiam, vice versa, quo tenens re-obligatur et astringitur ad fidem domino suo servandam, et servitium debitum faciendum. Homage is a bond of law by which one is held and bound to warrant, defend and acquit his tenant in his seisin, against all persons, by the certain service named and expressed in the gift; and also, on the other hand, by which the tenant in return is obligated and bound to keep his faith to his lord, and to perform the service due. *Bract.* fol. 78 b.

HOMAGIUM LIGIUM. L. Lat. Liege homage; that kind of homage which was due to the sovereign alone as supreme lord, and which was done without any saving or exception of the rights of other lords. *Spelman* voc. *Homagium*. So called from *ligando*, (binding,) because it could not be renounced like other kinds of homage. *Id.*

HOMAGIUM PLANUM. L. Lat. In feudal law. Plain homage; a species of homage which bound him who did it to nothing more than fidelity, without any obligation either of military service or attendance in the courts of his superior. 1 *Robertson's Charles V.*, Appendix, Note viii.

HOMAGIUM SIMPLEX. L. Lat. In feudal law. Simple homage; that kind of homage which was merely an acknowledgment of tenure, with a saving of the rights of other lords. *Hargr. Co. Litt.* note 18, lib. 2.

HOMAGIUM REDDERE. L. Lat. To renounce homage; to give it up, or dissolve it. *Bract.* fol. 81 b.

HOME. See *Domicile*.

HOME PORT. A port in a state in which the owner resides.* 1 *Brock. R.* 396, 404. But see 3 *Kent's Com.* 171, 172, note.

HOMESTEAD. The place of a home or house.* That part of a man's landed property which is about and contiguous to

his dwelling-house. *Parsons, J., 2 Metcalf's R.* 45, note. Called anciently a *homestall*, or *homestale*. *Cowell*.

HOMICIDE. L. Fr. & Eng. [Lat. *homicidium*, from *homo*, a man, or human being, and *cædere*, to kill, or *cædes*, a killing.] In criminal law. The killing of one human being by another, (*hominis occisio ab homine facta*.) *Bract.* fol. 120 b. 4 *Bl. Com.* 177. See *Wharton's Am. Crim. Law*, 217, 224. Divided by Blackstone (*ub. sup.*) into three kinds; justifiable, excusable, and felonious. 4 *Steph. Com.* 96, 97. See *Justifiable homicide*, *Excusable homicide*, *Felonious homicide*.

HOMICIDE PER INFORTUNUM. In criminal law. Homicide by misfortune, or accidental homicide; as where a man doing a lawful act, without any intention of hurt, unfortunately kills another; a species of excusable homicide. 4 *Bl. Com.* 182. 4 *Steph. Com.* 101. Called also *homicide per misadventure*. *Id. ibid.* 1 *Russell on Crimes*, 657. Answering to the *homicidium ex casu*, (q. v.) of Bracton. See *Per infortunium*, *Per misadventure*.

HOMICIDE PER MISADVENTURE. See *Homicide per infortunium*.

HOMICIDE SE DEFENDENDO. In criminal law. Homicide in self-defence; the killing of a person in self-defence upon a sudden affray; where the slayer had no other possible (or, at least, probable) means of escaping from his assailant. 4 *Bl. Com.* 183, 184—186. 4 *Steph. Com.* 103—105. A species of excusable homicide. *Id. ibid.* 1 *Russell on Crimes*, 660.

HOMICIDIUM. Lat. Homicide. *Est dictum homicidium ab homine et cædo, quasi hominis cædium*; it is called *homicidium* from *homine* and *cædo*, as it were *hominis cædium*. *Bract.* fol. 120 b. See *Homicide*.

Homicidium ex justitia; homicide in the administration of justice, or in the execution of the sentence of the law. *Id. ibid.*

Homicidium ex necessitate; homicide from inevitable necessity, as for the protection of one's person or property. *Id. ibid.* See *Justifiable homicide*.

Homicidium ex casu; homicide by accident. *Id. ibid.* See *Excusable homicide*.

Homicidium ex voluntate; voluntary or wilful homicide. *Id.* fol. 121. See *Felonious homicide*.

HOMINATIO. L. Lat. [from *homo*, a man or vassal.] In old English law. Homage, or the doing of homage. *Spelman*, voc. *Homagium*. *Domesday*. *Blount*.

HOMINES LIGII. L. Lat. In feudal law. Liege men; feudal tenants or vassals, especially those who held immediately of the sovereign. 1 *Bl. Com.* 367. See *Homo ligius*.

HOMINIUM. L. Lat. [from *homo*, a man or vassal.] In old English law. Homage. This, according to *Spelman*, was the original, and anciently the more common term, which afterwards gave place to *homagium*. *Spelman*, voc. *Homagium*.

HOMIPLAGIUM. L. Lat. [from *homo*, a man, and *plaga*, a wound.] In old English law. The maiming of a man. *LL. Hen. I.* c. 80. *Blount*.

HOMME. Fr. Man; a man. This term is defined by the civil code of Louisiana, to include a woman. *Art.* 3522, n. 1. 2. See *Homo*.

HOMMES DE FIEF. Fr. In feudal law. Men of the fief; feudal tenants, the peers in the lord's courts. *Esprit des Lois*, liv. 28, c. 27.

HOMMES FEODaux. Fr. In feudal law. Feudal tenants; the same with *hommes de fief*, (q. v.) *Esprit des Lois*, liv. 28, c. 36.

HOMO. Lat. A man. (See *Homo*, in feudal law.) *Homo consiliarius, et in lege peritus*; a counsellor, and learned in the law. 10 *Co.* 61.

A human being, including both male and female. *Hominis appellatione, tam fæminam quam masculum contineri, non dubitatur*; that both female as well as male is included under the term *homo*, is not doubted. *Dig.* 50. 16. 152. This exposition of the civil law is followed in the common law, and formally adopted in some modern codes. 2 *Inst.* 45. See *Homme*.

HOMO. L. Lat. In feudal law. A man; a vassal (*vassallus, vassus*;) a military or feudal tenant or retainer, (*miles, cliens feodalis*.) One who having received a fee or fief, was bound to fight for his lord, and to do homage, and other military services. Called also *baro*, and more frequently *leudes*. *Spelman*, voc. *Homagium*. A tenant by knight service. *Id. ibid.* *Plenam itaque custodiam domini filiorum*

et hæredum hominum suorum, et feodorum suorum, ita quod plenam inde habent dispositionem; the lords therefore have the entire wardship of the children and heirs of their tenants, and of their fees, so that they have the full disposition thereof. *Glanv.* lib. 7. c. 9. *Hugo Bardolf et Will. Stuteville consentire noluerunt quia erant homines comitis Johannis Moretonii*; Hugh Bardolf and Will Stuteville would not consent, because they were the *men* of earl John Moreton. *Hoveden in Ric.* I. A. D. 1193.

Any tenant of lands, whether agricultural, (*socmannus*), or military. *Spelman, ub. sup.*

Any retainer, dependant, servant, or person of inferior or servile condition; (*cliens, famulus, subditus*.) *Id. ibid.*

Homo casatus. One who did service within a house, (*qui in adibus servit*.) *Capitular.* lib. 5, c. 136. *Spelman, voc. Homagium*. But see *Casatus*.

Homo chartularius. A slave manumitted by charter. *Capitular.* lib. 6, c. 208.

Homo commendatus. One who surrendered himself into the power of another, for the sake of protection or support. *L. Ripuar.* tit. 72, § 5. See *Commendatus*.

Homo ecclesiasticus. A church vassal; one who was bound to serve a church, especially to do service of an agricultural character. *Capitular.* lib. 5, c. 151. *Spelman, voc. Homagium*.

Homo exercitalis. A man of the army (*exercitus*;) a soldier. *LL. Longob.* lib. 1, tit. 9, l. 21. *L. Wisigoth.* lib. 19, tit. 2, l. 9.

Homo feodalis. A vassal or tenant; one who held a fee (*feodum*), or part of a fee. *Spelman, ub. sup.*

Homo fiscalis or *fiscalinus*. A servant or vassal belonging to the treasury or *fiscus*. *Id. Formull. Solenn.* c. 90.

Homo francus. A freeman. See *Francus*. A Frenchman. See *Francus*.

Homo ingenuus. A free man. *L. Ripuar.* tit. 31, § 1. A free and lawful man. *Spelman, voc. Ingenuus*. A yeoman. *Id. ibid.*

Homo liber. A freeman. See *Liber homo*.

Homo ligius. A liege man; a subject; a king's vassal. *Spelman, voc. Homagium, Ligius*. The vassal of a subject. *Id. ibid.*

Homo novus. A new tenant or vassal; one who was invested with a new fee. *Spelman, voc. Homagium*.

Homo pertinens. A feudal bondman or vassal; one who belonged to the soil, (*qui gleba adscribitur*.) *LL. Longob.* lib. 1, tit. 16, l. 8.

Homo regius. A king's vassal. *L. Ripuar.* tit. 11, § 3.

HOMO ROMANUS. Lat. A Roman. An appellation given to the old inhabitants of Gaul and other Roman provinces, and retained in the laws of the barbarous nations. *L. Salic.* tit. 34, § 3. *Id.* tit. 43, §§ 6—8. *Spelman*.

HOMEHYNE. Sax. A domestic. *Spelman*. See *Hogehyne*.

HOMOLOGARE. Græco-Lat. [from Gr. *ὁμολογέω*, to consent, assent, confess.] In the civil law. To confirm or approve; to consent, or assent; to confess. *Calv. Lex*. Sometimes corruptly written *emologare*.

HOMOLOGATE. [from *homologare*, q. v.] In modern civil law. To approve, to confirm; as a court *homologates* a proceeding. See *Homologation*. Literally, to use the same words with another, (Gr. *ὁμός*, same, and *λόγος*, word;) to say the like. *Martin, J., 9 Martin's (La.) R.* 324. To assent to what another says or writes.

HOMOLOGATION. [from *homologare*, q. v.] In modern civil law. Approbation or confirmation by a court; as of an award, a partition, &c. *Civil Code of Louis.* art. 3096, 1296, 1297, 1299.

In Scotch law. Consent tacitly inferred from fact or deed. 1 *Forbes' Inst.* part 2, p. 165.

HOMOLOGUS. Lat. In feudal law. A liege vassal. The same, according to the feudists, as *homo ligius*. But *Spelman* and *Calvin* disapprove this derivation.

HOMONYMIÆ. Græco-Lat. [from Gr. *ὁμός*, same, and *ὄνομα*, name.] A term applied in the civil law, to cases where a law was repeated, or laid down in the same terms or to the same effect, more than once. 2 *Kent's Com.* 489, note.

HOMSTALE. Sax. [from *ham*, house, and *stal*, station.] In old English law. A mansion house, or homestall. *Cowell*. See *Homestead*.

HONDHABEND. Sax. Having in hand. See *Handhabend*.

HONESTE. Lat. Honorably; with credit or propriety; in a manner becoming one's station; becomingly; virtuously. *Provideatur ei domus competens in qua possit honeste morari, quousque dos sua ei assignetur*; there shall be provided for her a sufficient house, in which she may

tarry, or live creditably, until her dower be assigned her. *Bract.* fol. 96. *Honeste vivere*; to live honorably, creditably or virtuously. One of the three general precepts to which Justinian reduced the whole doctrine of the law. *Inst.* 1. 1. 8. *Bract.* fol. 3, 3 b. This phrase is rendered by Blackstone, as well as Harris and Cooper, in their translations of the Institutes, "to live *honestly*." 1 *Bl. Com.* 40. But this is not the proper meaning of *honeste*, either in classical or law Latin. *Id. ibid.* Christian's note. See the quotation from Bracton, *supra*; and see *Honestus*.

HONESTUS. Lat. Of good character, or standing. *Coram duobus vel pluribus viris legalibus et honestis*; before two or more lawful and good men. *Bract.* fol. 61.

Proper or becoming. *Nem omne quod licet honestum est.* What is lawful is not always becoming. *Dig.* 50. 17. 144.

HONOR, HONOUR. In feudal law. A seigniorship of the nobler sort, having several inferior lordships and manors dependent upon it, by the performance of customs and services. *Cowell. Termes de la ley. Blount.* 1 *Steph. Com.* 202. The seigniorship of a lord paramount. 2 *Bl. Com.* 91. This term was introduced into England by the Normans, and anciently signified the feudal patrimony, estate or barony of a greater baron. It was called also a royal benefice or fee, and was always held of the king *in capite*. *Spelman.*

HONOR COURTS. In English law. Courts held within honors. *Stat.* 33 *Hen.* VIII. c. 37. *Stat.* 37 *Hen.* VIII. c. 18. *Cowell.*

TO HONOR. In mercantile law. To accept a bill of exchange; to pay a bill or note when due.

HONORARIUM. Lat. In the civil law. An honorary or free gift; a gratuitous payment, as distinguished from hire or compensation for service; a lawyer's or counsellor's fee. Among the ancient Romans advocates practised *gratis*, for honor merely, or at most for the sake of gaining influence; being prohibited by the Cincian law from taking any fees or presents for their services. Under the emperors, the taking of fees to a certain limit (ten thousand sesterces, or about 80*l.* of English money,) was permitted. 3 *Bl. Com.* 28. *Tacit. Annal.* lib. xi. c. 5. The ancient idea continued however to be retained in the name (*honorarium*) given to the fees

thus allowed, and is still preserved in that rule of the English law that a counsel can maintain no action for his fees. 3 *Bl. Com. ub. sup.* *Story on Bailm.* § 153.

HONORARY SERVICES. In English law. Services incident to grand serjeanty, and annexed commonly to some honor. *Cowell.*

HONTFANGENETHEF. *Cowell* thinks this word should be written *hontfangenethef*, signifying a thief taken *hont* habend. But it is rather a misprint for *houtfangenethef*, a form or corruption of *outfangenethef*. Bracton uses both *hutfangtheft*, and *utfangenethef*. *Bract.* fol. 122 b, 154 b. So *infangenethef* was otherwise written *hinfangtheft*. *Id. ibid.* See *Outfangtheft*.

HOPE. In old English law. A valley. *Co. Litt.* 4 b.

HORA. Lat. An hour. *Hora fit ex quadraginta momentis*; an hour consists of forty minutes. *Bract.* fol. 264, 359 b. 2 *Inst.* 318. See *Hour*.

HORA AURORÆ. L. Lat. In old records. The morning bell. *Cowell.*

HORÆ JURIDICÆ. Lat. Juridical hours; hours for judicial business; hours during which judges sit in court. 2 *Inst.* 265. In Fortescue's time, the judges of England did not sit in the king's courts above three hours in the day, that is, from eight in the morning till eleven. *Fortescue de L.L. Angliæ*, c. 51. *Selden's note*, in loc.

HORDERIUM. L. Lat. In old English law. A hoard; a treasure, or repository. *LL. Canut.* c. 104. *Cowell.*

HORDEUM. Lat. In old records. Barley. *Hordeum palmale*; beer barley, as distinguished from common barley, which was called *hordeum quadragesimale*. *Blount.*

HORN WITH HORN. In old records. The promiscuous feeding together of horned cattle upon the same common. *Spelman. Cowell.* The intercommoning of horned cattle, where there was common *pur cause de vicinage*. *Blount.*

HORN TENURE. See *Cornage*. The Pusey estate in England was held by the tenure of a horn, which, on a bill filed in chancery, was ordered to be delivered up to the heir. 1 *Vern.* 273.

HORNGELD. Sax. [from *horn*, and *geld*, a payment.] In old English law. A tax within a forest, paid for horned beasts. *Crompt. Jurisd.* 197. *Cowell. Blount.*

HORNING, or LETTERS OF HORNING. In Scotch law and practice. A warrant in the king's name, issued out under the signet, to charge persons to pay, or perform deeds within a prefixed time, upon pain of being declared outlaw, and having their goods poulded, [i. e. distrained,] &c. in case of disobedience. 1 *Forbes' Inst.* part 3, p. 22. A species of diligence, [i. e. process] against a debtor, proceeding on the warrant of a decree of the court of session, directing the debt to be paid within a limited number of days; in default of which payment, the debtor incurs the charge of rebellion, and is thereupon liable to caption or arrest. *Brande.*

HORREUM, Orreum. Lat. A place for keeping grain; a granary. See *Custos horrei.*

A place for keeping fruits, wines, and goods generally; a store-house. *Calv. Lex. De mercibus in orreis. Bract. fol. 48.*

HORS. L. Fr. Out; out of; without. Probably derived, through *fors*, from the Latin *foris*; *f* and *h* being sometimes interchangeable letters. Thus *forsprise* is sometimes written *horsprise* or *horspris*. See *Foris, Forprise.* *Hors son sen*; out of his sense or mind. *Britt. c. 85. Hors de pryson*; out of prison. *Stat. Mod. Lev. Fines. Tener hors*; to keep out. *Britt. c. 65.*

HORS DE SON FEE. L. Fr. Out of his fee. *Britt. c. 38.* The name given in the old books to an exception or plea to avoid an action brought for rent issuing out of certain land, by one pretending to be the lord, or for some customs and services; for if the defendant could prove the land to be out of the compass of the plaintiff's fee, the action failed. *Termes de la ley. 3 Reeves' Hist. Eng. Law. 455. See Extra feudum, District.*

HORS PRIS. L. Fr. Except. Literally translated by the Scotch *out taken.* *Hors pris clers, gentz de religion, et femmes*; except clerks, people of religion, and women. *Britt. c. 29.*

HOSPES. Lat. A guest. 8 *Co. 32, Calye's case.* See *Hospites.*

A host, or entertainer. *Calv. Lex.* More commonly *hospitator*, (q. v.)

HOSPITARE. Lat. [from *hospes*, q. v.] To entertain a guest. *Reg. Orig. 105. Hospitatus*; one entertained; a guest. *Id. ibid. Ad hospitandum. Id. ibid.*

HOSPITATOR. L. Lat. [from *hospitare*, (q. v.) or according to Coke, from *hospitium*.] An entertainer; a host. *Reg. Orig. 105. Hospitator communis*; a common innkeeper. *Plowd. 9, marg. 8 Co. 32, Calye's case.*

HOSPITES. Lat. [plural of *hospes*, q. v.] Guests. *Reg. Orig. 105. Ut hospites*; as guests. 1 *Salk. 25, pl. 10.*

HOSPITIA. Lat. [pl. of *hospitium*, q. v.] Inns. *Hospitia communia*, common inns. *Reg. Orig. 105. Hospitia curiæ*; inns of court. *Hospitia cancellaria*; inns of chancery. *Crabb's Hist. Eng. Law, 428, 429. 4 Reeves' Hist. 120.*

HOSPITIUM. Lat. An inn, or hostel. *Commune hospitium*; a common inn. 8 *Co. 32, Calye's case. Hob. 245 b. See Infra hospitium.*

HOST; Hoste, Houst. L. Fr. An army. *Britt. c. 22.*

A military expedition; war. *Kelham.*

HOSTAGIUM. This word is given by Blount from the *Monasticon Anglicanum*, par. 1. fol. 348 b, without any signification. It probably signified a tax or tribute towards the support of an army, (*hostis* or *hostium*.)

HOSTE. L. Fr. A host, or entertainer. *Kelham.*

A guest. *En droit de hostes, volons que chescun respoigne pur son hoste que il avera herberge, &c.*; in right [or, as to the law] of guests, we will that every one shall answer for his guest, whom he shall have harbored, &c. *Britt. c. 12.*

HOSTEL, Hostell. L. Fr. A household. *Britt. fol. 1 b. Artic. sup. Chart. c. 2.*

HOSTELAGIUM. L. Lat. In old records. A right to receive lodging and entertainment, anciently reserved by lords in the houses of their tenants. *Cowell.*

HOSTELER, Hostiler. [Fr. *hostelier*.] An innkeeper. *Cowell. Blount.*

HOSTENDUCLÆ. L. Lat. [from *hostis*,

an army.] In feudal law. A tribute or aid resembling scutage. *Spelman*.

HOSTES. Lat. [pl. of *hostis*, q. v.] Enemies. *Hostes hi sunt qui nobis, aut quibus nos publice bellum decrevimus, ceteri latrones aut praedones sunt.* Enemies are those who declare war against us, or against whom we declare war, publicly; all others are pirates or robbers. *Dig.* 50. 16. 118. This definition of the civil law is accurately given by Blackstone, but carelessly quoted by Coke. 1 *Bl. Com.* 257. 7 *Co.* 24 b, *Calvin's case*.

HOSTIA. Lat. The host, bread or consecrated wafer in the eucharist. *Cowell*.

HOSTIS. Lat. An enemy; one who makes war by an open formal proclamation of hostility. See *Hostes*.

HOSTIS. L. Lat. [from Fr. *hoste*.] A host or army. This sense of the word is common in ancient European laws, proceedings of councils, and authors of the middle ages. *Spelman*.

HOSTIUM. L. Lat. In old European law. A host or army. *Spelman*, voc. *Hostis*.

Used also for *ostium*, a door. *Ad hostium ecclesia*; at the church door. *Bract.* fol. 303. *Custodes hostiorum*; doorkeepers. *Stat. Westm.* 2, c. 44.

HOTCHPOT. [Sax. *hutspot*, *hotspot*; L. Fr. *hochepot*; L. Lat. in *partem positio*, —*collatio*.] A mixing or blending together; a commixion or commixture of divers things together.* *Co. Litt.* 177 a. A throwing of one or more separate portions into a common stock.* Anciently applied to the mixing and blending of lands given to one daughter in frank marriage, with those descending to her and her sisters in fee simple, for the purpose of dividing the whole equally among them; without which the daughter who held in frank marriage could have no share in the lands in fee simple. *Litt.* sect. 267, 268. *Co. Litt.* 177 a. 2 *Bl. Com.* 190. To put in *hotchpot*, or bring into *hotchpot*, (L. Fr. *mitten en hotchpot*;) signified to make this mixture. *Litt.* sect. 267, 268. These terms are traced by Blackstone, after *Spelman*, to the *mitten in confusum*, of the law of the Lombards. 2 *Bl. Com.* 190. The word *hotchpot* is considered by Webster as of French origin; but Lord Coke treats it as another form of the Sax. *hotspot*, a pudding or mixture of different ingredients,

and Littleton expressly gives it this meaning. *Litt.* sect. 267. *Co. Litt.* 177 a. *Spelman* writes it *hotchpotch*.

Hotchpot, or the putting in *hotchpot* is applied in modern law to the throwing the amount of an advancement made to a particular child in real or personal estate, into the common stock, for the purpose of a more equal division, or of equalizing the shares of all the children. 2 *Bl. Com.* 516, 517. 2 *Kent's Com.* 421, 422. 4 *Id.* 418, 419. This answers to, or resembles the *collatio bonorum*, or collation of the civil law. *Id. ibid.* See *Collatio bonorum*. The term has been applied by Mr. Justice Story in a case of salvage. 1 *Sumner's R.* 400, 421.

HOUAWARTH. [quasi *hofwarde*, from Sax. *hof*, a house, and *werde* or *warde*, a guard.] In old European law. One that keeps or guards a house, (*ædium vel aula custos*.) *Spelman*. L. *Baivarior.* tit. 19, § 9.

HOUR. [Lat. *hora*.] The twenty-fourth part of a day; consisting of sixty minutes. In the old books, it is said to consist of forty minutes. *Bract.* fol. 264. 2 *Inst.* 318. In the note to 2 *Bl. Com.* 140, the word *forty* in 2 *Inst.* 318, is called a misprint. But Lord Coke merely copied from Bracton, who very plainly uses the word *quadraginta*. See *Hora*.

HOUSE. [from Sax. *hus*; Lat. *domus*.] A building intended for human habitation. 14 *Mees. & W.* 181. "We all think," observes Pollock, C. B., in this case, "that the term *house*, *prima facie*, means a dwelling house." *Id.* 185. And see 4 *Man. Gr. & Scott*, 105. But in 7, *Man. & Gr.* 122, it was said that a *house* does not necessarily mean a *dwelling-house*. *Creswell, J., Id.* 136. A building calculated to be used as a dwelling-house, though not used as such, is properly described as "*a house*." *Id.* 122. This was decided under the statute 2 Will. IV. c. 45. A building divided into floors and apartments, with four walls, a roof, a door and chimneys, would be considered in ordinary parlance between man and man, as a *house*. *Tindal, C. J., Id.* 125. See *Domus*, *Dwelling-house*.

By the grant of a messuage or *house*, the orchard, garden and curtilage occupied therewith will pass, (but *contra*, as to the garden;) and so an acre or more may pass by the name of a *house*. So, by a devise of a messuage or *house*, land will pass; but what shall be said to pass by a devise

is a question of intention. 1 *Crabb's Real Prop.* 68, § 87. In Pennsylvania it has been held that in the devise of a *house* in a will, the word "*house*" is synonymous with "*messuage*," and conveys all that comes within the curtilage. 4 *Rawle's R.* 339. 4 *Penn. St. (Barr's) R.* 93. But this is doubted. 2 *Hilliard's Real Prop.* 548. 1 *Jerman on Wills*, 709, (606, 607, Perkins' ed. notes.)

HOUSEBOTE, *Housbote*. [from *house*, and Sax. *bote*, an allowance.] An allowance of wood made to a tenant, for repairing his *house*. Necessary timber which a lessee for years, or for life, is allowed to cut off the ground let to him, for the purpose of repairing the houses upon the same ground.* *Termes de la ley*. 2 *Bl. Com.* 35. *Bract. fol.* 408. It is sometimes said to include necessary wood for burning in the house; though the latter is more properly called by the distinct name of fire-bote. *Co. Litt.* 41 b. 2 *Bl. Com.* 35. Bracton (*ub. sup.*) makes a clear distinction between them.

HOUSEHOLD. A family living together. Platt, J., 18 *Johns. R.* 400, 402. Those who dwell under the same roof and compose a family. Webster. A man's family living together constitutes his household, though he may have gone to another state. 18 *Johns. R. ub. sup.*

Belonging to the house and family; domestic. Webster.

"HOUSEHOLD FURNITURE," in a will, includes all personal chattels that may contribute to the use or convenience of the householder, or the ornament of the house; as plate, linen, china, both useful and ornamental, and pictures. But goods in trade, books and wines will not pass by a bequest of household furniture. *Ambli.* 605. 1 *Roper on Legacies*, 268, 270. *Ward on Legacies*, 215. 2 *Williams on Exec.* 1021. 1 *Johns. Ch. R.* 329.

"HOUSEHOLD GOODS," in a will, include every thing of a permanent nature, (i. e. articles of household which are not consumed in their enjoyment) that are used in, or purchased or otherwise acquired by a testator for his house. 1 *Roper on Legacies*, 253, and cases there cited. *Ward on Legacies*, 217. 2 *Williams on Exec.* 1017.

"HOUSEHOLD STUFF," in a will, includes every thing which may be used for the convenience of the house, as tables, chairs, bedding and the like. But apparel,

books, weapons, tools for artificers, cattle, victuals and choses in action will not pass by those words, unless the context of the will clearly show a contrary intention. 1 *Roper on Legacies*, 278. *Shep. Touch.* 447.

HOUSEHOLDER. The occupier of a house. Brande. More correctly, one who keeps house with his family, the head or master of a family. Webster. Platt, J., 18 *Johns. R.* 302. One who has a household; the head of a household. See *Household*.

HOUSEKEEPER. One who keeps or occupies a house, as distinguished from a boarder, inmate or lodger.* A person actually occupying part or the whole of a house, being the party responsible to the landlord for the entire rent, and assessed or liable for parochial rates and taxes. 3 *Petersd. Abr.* 103, note. Webster makes it synonymous with *householder*, but it has been decided otherwise. 1 *Dowl. P. C.* 172. The principle requiring bail to be a housekeeper is a salutary rule, as it excludes persons who have not a *fixed, permanent and known residence*. Ashton, J., *Lofft*, 148.

HOWE. In old English law. A hill. *Co. Litt.* 5 b.

HUDEGELD. In old English law. Supposed by Cowell to be the same with *hide geld*, a sum anciently paid by a villein or servant to save himself from being whipped. *Flata*, lib. 1, c. 47, sec. 20. See *Corium*. But Blount makes it to be a misprint for *hinegeld*, a penalty for assaulting a servant.

HUE AND CRY. [L. Lat. *hutesium et clamor*: *clamor popularis*: L. Fr. *crie de pays*.] In English law. A loud outcry with which felons, (such as robbers, burglars and murderers,) were anciently pursued, and which all who heard it were bound to take up, and join in the pursuit, until the malefactor was taken. *Bract. fol.* 115 b, 124. The ancient law was that where a felony had been committed, and the felon fled and could not be taken, hue and cry was to be immediately raised, (*statim levetur hutesium*,) and pursuit (*secta*) made after him from town to town, (*de villa in villam*,) or from one district to another (*de terra in terram*,) until he was taken; otherwise the township (*villata*,) where the felony was committed was liable to be amerced. *Bract. ub. sup.* The hue and cry might be by horn, and by voice, (*de cornu et de bouche*;) and in Scotland it was

raised by blowing a horn, with which the *la meyne de corne* of Britton corresponds. 2 *Inst.* 173. *Skene de Verb. Signif.* voc. *Hutesium*. *Britt.* c. 27. Its object was to raise the country, or to give general notice to the neighboring inhabitants, so as to secure an immediate and effectual pursuit. It is now discontinued in England, having given place to the ordinary complaint made to a peace officer, on commission of a felony; but a modification of it exists in the outcry made upon the escape of a *thief*, which is still common there as well as in the United States. 4 *Steph. Com.* 360, 361. The public and general *pursuit* made after felons, upon complaint made, is still retained. *Id. ibid.*

The words *hue* and *cry*, according to the best authority, are of the same signification; *hue* being derived from the Fr. *huyer*, to cry out or exclaim. *Spelman.* 2 *Inst.* 173. Bracton uses *hue* (*hutesium*), alone, in some passages. *Bract.* fol. 115 b, 124. Glanville, on the other hand, uses *cry*, (*clamor*), without *hue*, calling it the *cry* of the country, (*clamor popularis*;) and so does the Statute of Westminster 1, c. 9. (*crie de pays*.) Skene derives *hue* from the Fr. *oyes*, hear; and Manwood from the Lat. *heu*, an expression of complaint. See *Cowell*. And see *Crie de pais*, *Hutesium*.

HUEBRAS. Span. A measure of land equal to as much as a yoke of oxen can plough in one day. 2 *White's Recop.* [38,] 49. 12 *Peters' R.* 443.

HUIS, Huys. L. Fr. [from Lat. *ostium*.] A door. *Al huis d'esglise*; at the church door. *Litt.* sect. 39. *Al huys de moustre.* *Britt.* c. 107.

HUISSIER. Fr. [from *huis*, a door.] In French law. A name given to the executive officers of courts of justice, whose original function was that of a *door-keeper*. *Brande.* The English word *usher* is from this source.

HULKA. L. Lat. In old records. A hulk or small vessel. *Cowell*.

HULLUS. L. Lat. In old records. A hill. 2 *Mon. Angl.* 292. *Cowell*.

HULMUS. See *Holm*.

HUM, Huem. L. Fr. Corrupt forms of *home*, (q. v.) *Kelham*.

HUNDRED. [L. Lat. *hundredus*, *hundredum*, *hundreds*; *centena*, *centuria*.] In

English law. A portion or subdivision of a county; so named because originally composed of ten tithings, or consisting as is supposed, of *one hundred* freemen or frankpledges, although the number of one hundred does not seem to have been invariable. *Spelman*. Its establishment is generally ascribed to Alfred, and it is supposed to have been introduced from the continent where a similar territorial division, under the name of *centena*, prevailed from a very early period. See *Centena*. Its essential use was in the liability of the hundredors, (or families composing it,) where offences were committed within their district, either to produce the offender or make good the damage, and this feature, which seems to have always belonged to it, is still to a limited extent retained. 1 *Bl. Com.* 115. See *Hundredor*. Its ancient importance arose in a great degree from the court which was regularly held in it for the trial of causes, called the *hundred court*, now disused. See *Hundred Court*. It was governed by an officer called *dominus hundredi*, (lord of the hundred,) *aldermannus hundredi*, (alderman of the hundred,) or *hundredarius*, (hundredary;) and is now under the government of a high constable or bailiff. *Spelman*. *Crabb's Hist. Eng. Law.* 17. 1 *Bl. Com.* 115. 1 *Steph. Com.* 117. In some of the more northern counties, hundreds are called *wapentakes*. *Id. ibid.* and notes.

HUNDRED COURT. [L. Lat. *curia hundredi*.] In English law. A larger court baron, being held for all the inhabitants of a particular *hundred*, instead of a manor. The free suitors are the judges, and the steward the registrar, as in the case of a court baron. It is not a court of record, and resembles a court baron in all respects except that in point of territory it is of greater jurisdiction. Like several other inferior courts, however, it has fallen into disuse, and is not now resorted to. 3 *Bl. Com.* 34, 35. 3 *Steph. Com.* 394, 395. This is not to be confounded with the hundred court of the Saxon times, called *hundred gemote*. (q. v.)

HUNDRED GEMOTE. [L. Lat. *curia centuria*, or *hundredi*; *hundredum*.] In Saxon law. A meeting or court of a hundred. See *Gemote*. A court held for every hundred, by the hundredors or inhabitants of the district, who were compelled to attend under heavy penalties. It was of considerable importance and distinction, being a court of civil and criminal

jurisdiction, and having cognizance, like the county court, of ecclesiastical as well as civil matters. *Spelman*, voc. *Hundredus*, *Gemotum*. 1 *Reeves' Hist. Eng. Law*, 7. *Crabb's Hist.* 27.

HUNDRED LAGH. Sax. The law of the hundred, or hundred court; liability to attend the hundred court. *Spelman*, voc. *Hundredus*. Cowell and Blount translate it, *hundred court*.

HUNDRED PENNY. In old English law. A tax collected from the hundred, by the sheriff or lord of the hundred. *Spelman*, voc. *Hundredus*.

HUNDRED SETENA. Sax. In Saxon law. The dwellers or inhabitants of a hundred. Cowell. Blount. *Spelman* suggests the reading of *sceatena* from Sax. *sceat*, a tax.

HUNDRED WEIGHT. A denomination of weight containing one hundred and twelve pounds. *Brande*. By the Revised Statutes of New-York, a hundred weight is made to consist of one hundred pounds avoirdupois. 1 *Rev. Stat.* [611, § 35,] 621, § 39.

HUNDREDA. L. Lat. In old English law. A hundred. *Spelman*, voc. *Hundredus*.

HUNDREDARIUS. L. Lat. In old English law. A hundredary or hundredor. A name given to the chief officer of a hundred, as well as to the free holders who composed it. *Spelman*, voc. *Hundredus*.

HUNDREDARY. [L. Lat. *hundredarius*.] The chief or presiding officer of a hundred. See *Hundredarius*.

HUNDREDORS. In English law. The inhabitants or freeholders of a hundred, anciently the suitors or judges of the hundred court. See *Hundred*. Persons impaneled or fit to be impaneled upon juries, dwelling within the hundred where the cause of action arose. *Crompt. Jur.* 217. It was formerly necessary to have some of these upon every panel of jurors. 3 *Bl. Com.* 359, 360. *Id.* 352. 4 *Steph. Com.* 370.

The term *hundredor* was also used to signify the officer who had the jurisdiction of a hundred, and held the hundred court, and sometimes the bailiff of a hundred. *Termes de la ley*. Cowell.

The inhabitants of a hundred in which any damage is done by rioters feloniously

demolishing buildings or machinery, are liable to make it good to the party injured. *Stat.* 7 & 8 Geo. IV. c. 31, ss. 2, 3. *Stat.* 2 & 3 Will. IV. c. 72. 4 *Steph. Com.* 275. This liability was anciently much more extensive, and constituted a peculiar feature of the hundred from the earliest times. See *Hundred*.

HUNDREDUM. L. Lat. In old English law. A hundred; the subdivision of a county or shire. *Spelman*, voc. *Hundredus*.

The ancient hundred-court. *Qualiter hundredum teneri debeat*; how the hundred ought to be held. *LL. Inæ, apud Spelman*, ub. sup. *Hundreda*; hundreds or hundred courts. *LL. Edw. Conf.* c. 35.

The privilege or immunity of being quit or free from payments or customs due to hundredors, or the governors of hundreds. *Spelman*, voc. *Hundredus*. *Termes de la ley*.

HUNDREDUS. L. Lat. A hundred. *Spelman*.

HUNT. The abbreviation of Huntingdonshire, in old English pleadings and records. *Towns. Pl.* 147.

HURDEREFEST. Sax. [from *hyred*, a family, and *fest*, fixed.] In old English law. One who is fixed or settled in a certain family. *Spelman*. Called by Bracton, *husfastene*, (q. v.)

HURST, Hirst. [Sax. *hyrst*.] In old English law. A wood. *Spelman*. *Co. Litt.* 4 b.

HUS. Sax. A house.

HUS and HANT. These words occur in a record of the *Curia Regis* in the 27th year of Henry III. (rot. 9.) setting forth that a certain H. P. being arrested on the complaint of merchants of Flanders and imprisoned, offers to the king *Hus* and *Hant* in pledge, *offert domino regi Hus et Hant in plegio*, to stand to the right, and to answer to the aforesaid merchants, and to all others who will complain against him. And divers persons come who become bail that the said H. P. shall appear by *Hus* and *Hant*, (*manucapiunt quod dictus H. P. per hus et hant veniet*) at the king's summons, &c. *Spelman* suggests that this may be *common bail* by fictitious persons, like the more modern John Doe and Richard Roe. But the proceeding more nearly resembles the giving of *special bail*.

HUSBANDUS. L. Lat. [from Sax. *hus*, house, and *band*, a bond.] In old Scotch law. The head of a family, employed in agriculture; (Lat. *æconomus*, Fr. *mesnager*.) *Stat. David II. Reg. Scot. c. 43. Spelman.*

HUSBREC. Sax. [from *hus*, house, and *bryce*, breach.] In Saxon law. The crime of housebreaking, or burglary. *Crabb's Hist. Eng. Law*, 59, 308.

HUSCARLE. Sax. [from *hus*, house, and *carl*, man.] In old English law. A house servant, or domestic; a man of the household, (*vir e familia*.) *Spelman.*

A king's vassal, thane or baron; an earl's man, or vassal. A term of frequent occurrence in Domesday Book. *Domesd. titt. Middlesex, Rogerius comes, Ticheham. Id. titt. Bockinghamseire, Hugo Comes, Senelai. Id. titt. Grentbrigsc. Comes Alanus, Sidefam.*

HUSFASTENE. Sax. [from *hus*, house, and *fast*, fixed.] In Saxon law. A term applied to one who held a house and land, (*qui terram tenet et domum*.) *Bract. fol. 124 b.* A householder, or one who had a fixed habitation, (*quasi domi-fixus*), as distinguished from one who went about from place to place, (*itinerans de loco in locum*.) *Id. ibid. Spelman.* All these were bound to be members of some frankpledge. *Bract. ub. sup.*

HUSGABLUM. Sax. and L. Lat. [from *hus*, house, and *gablum*, a rent.] In old records. House rent; or a tax or tribute laid upon a house. *Cowell. Blount.*

HUSTINGS, Husting. [from Sax. *hus*, house, and *thing*, a cause, or plea; q. d. a house of causes, or place where causes are pleaded: L. Lat. *hustingum, hustingus, hustingia*.] The principal court of the city of London, held before the lord mayor, recorder, and aldermen; of which, however, the recorder is in effect the sole judge. It is the county court of London, but has cognizance of no actions that are merely personal. 3 *Steph. Com.* 449, note (l). 2 *Inst.* 322. *F. N. B.* 22 H. It is of Saxon origin, and very high antiquity, as is proved by the record of a transaction before it, in the reign of Henry I. which *Spelman* gives at length. The proper term seems to be *husting*, in the singular. See *Hustingus*.

HUSTINGUS. L. Lat. In old English law. The husting, or principal court

of London. *Apud London, in hustingo*; at London in the husting. *Bract. fol. 127. In London, extra hustingum*; in London, out of the husting. *Id. fol. 133.*

HUTESIUM, Huthesium, Uthesium, Utesium. L. Lat. A hue, or outcry. *Bract. fol. 115 b, 124. Levare hutesium*; to raise the hue. *Id. ibid. Hutesium et clamor*; hue and cry. *Id. 16 b, 115 b, 157. See Hus and cry.*

HUTFANGTHEFE. Otherwise written *utfangthef*, (q. v.) *Bract. fol. 122 b, 154 b.*

HUY. L. Fr. [from Lat. *hodie*?] To-day. *Kelham.*

HUYER. L. Fr. To cry out, or proclaim. *Kelham.*

HUYS. L. Fr. A door. See *Huis*.

HYBERNAGIUM. L. Lat. [from *hibernus*, of winter.] In old English law. The season for sowing winter grain, between Michaelmas and Christmas. *Cowell.* The land on which such grain was sown. *Id.*

The grain itself; winter grain or winter corn. *Id.*

HYDAGE. See *Hidage*.

HYDE. See *Hide*.

HYL. L. Fr. A corrupt form of *il*, (q. v.) *Kelham.*

HYPOBOLON, Hypobolum. Græco-Lat. [from Gr. *υποβάλλειν*; see *infra*.] In civil, feudal and old European law. That which was given to a woman on the death of her husband, in addition to her dowry, (*dotis incrementum*.) *Calv. Lex.* It seems to have resembled the dower of the English law. *Id. ibid.*

This word is commonly derived from the Gr. *υποβάλλειν*, which is translated "to add a smaller to a larger thing or sum." But this is properly the meaning of *υπερβάλλειν*, which would make *hyperbolon* the more strictly accurate reading. And see *Calv. Lex. voc. Hypobolica*.

HYPOTHECA. Græco-Lat. [from Gr. *υποθηκη*; from *υποτιθέναι*, to put under; Lat. *supponere*.] In the civil law. That kind of pledge in which the possession of the thing pledged remained with the debtor, the obligation resting in mere

contract, without delivery, (*quæ sine traditione, nudâ conventione tenetur* :) and in this respect distinguished from *pignus*, of which the possession was delivered to the creditor or pawnee. *Dig.* 13. 7. 9. 2. *Inst.* 4. 6. 7. 2 *Bl. Com.* 159. *Story on Bailm.* § 286. 2 *Story's Eq. Jur.* § 1005. Answering to the modern *mortgage*. 4 *Kent's Com.* 136. Literally, a *putting under*; a subjecting to an incumbrance or obligation. The Scotch *hypotheck*, and French *hypothèque* are closely formed from this word. *Ypoteca* is a Latin form occurring in the Register. *Reg. Orig.* 306 b.

The right or obligation arising from a pledge without delivery. *Dig.* 20. 1. 4. *Calv. Lex.* So far as the remedy (*actio hypothecaria*.) for enforcing the creditor's right was concerned, there was no difference between *hypotheca* and *pignus*. *Inst.* 4. 6. 7. *Dig.* 20. 1. 5. 1.

HYPOTHECARIA ACTIO. Lat. In the civil law. An hypothecary action; an action for the enforcement of a *hypotheca*, or right of mortgage; or to obtain the surrender of the thing mortgaged. *Inst.* 4. 6. 7. 1 *Mackeld. Civ. Law*, 395, § 358. Adopted in the Civil Code of Louisiana, under the name of *l'action hypothécaire*, (translated, *action of mortgage*.) Art. 3361.

HYPOTHECARIJ CREDITORES. Lat. In the civil law. Hypothecary creditors; those who loaned money on the security of a *hypotheca*, (q. v.) *Calv. Lex.*

HYPOTHECATE. [from Græco-Lat. *hypotheca*, q. v.] To pledge a thing without delivering the possession of it to the pledgee. "The master, when abroad, and in the absence of the owner, may *hypothecate* the ship, freight and cargo, to raise money requisite for the completion of the voyage." 3 *Kent's Com.* 171.

HYPOTHECATION. [from Græco-Lat. *hypotheca*, q. v.] A pledge without possession by the pledgee. *Story on Bailm.* § 286. "The *hypothecation* of the ship or cargo is the transfer of a title to take effect conditionally." 2 *Phillips on Ins.* 296. See *Hypothecate*.

HYPOTHEQUE. Fr. [from Græco-Lat. *hypotheca*, q. v.] Translated *mortgage*, in the Civil Code of Louisiana. Art. 3360.

HYPHE. Sax. In English law. A port, wharf or small haven to embark or land merchandize at. *Cowell. Blount.*

I.

I, at the beginning of words having the first syllable *In*, commonly denotes a derivation from the Latin, as *E*, in a similar position, indicates a derivation from the French. See *E*. But *I* and *E* were formerly, in many instances, used as initial letters indifferently, and in some words the practice continues to be retained.

I, in the Latin of the civil law, is sometimes used for *e*; as *petitioni* for *petitione*, *affinitati* for *affinitate*, and *vice versa*. So it occasionally occurs in place of *u*, as *reciperare* for *recuperare*. *Calv. Lex.*

IBI. Lat. There; in that place: the correlative of *ubi*. *Calv. Lex.* *Ibi semper debet fieri trialis ubi juratores meliorem possunt habere notitiam.* A trial ought always to be had where the jurors can have the best information. 7 *Co.* 1 b, *Bulwer's case*.

Therein; in that thing. *Calv. Lex.*

Then. *Id.*

IBID. An abbreviation of *ibidem*, (q. v.)

IBIDEM. Lat. In the same place. In the same thing, matter or case.

IBIMUS. Lat. [from *ire*, to go.] We will go. *Nec super eum ibimus*; nor will we go, or pass upon him. *Magna Charta*, c. 29. These words have been interpreted to mean, "nor will we sit in judgment upon him ourselves"; that is, he shall not be condemned in the court *coram rege*. 2 *Inst.* 46, 49. 1 *Reeves' Hist.* 249. But this construction has been disputed. 3 *Chitt. Bl. Com.* 41, note.

IBM. A contraction of *ibidem*, (q. v.)

ICTUS ORBUS. L. Lat. In old English law. A stroke which merely made a bruise or swelling, without breaking the skin. *Bract.* fol. 122.

ID. A common abbreviation of *idem*, (q. v.)

ID. Lat. That. *Id certum est quod certum reddi potest.* That is certain which can be made certain. 2 *Bl. Com.* 143. 1 *Id.* 78. 4 *Kent's Com.* 462. See *Certum*. *Id certum est quod certum reddi potest, sed id magis certum est quod de semetipso est certum.* That is certain

which can be made certain, but that is more certain which is certain of itself. 9 *Co.* 47 a, *Earl of Shrewsbury's case*.

ID EST. (abbrev. *i. e.*) Lat. That is. See Calvin's exposition of this phrase in the civil law.

IDEM. Lat. The same. According to Lord Coke, *idem* has two significations, sc. *idem syllabis seu verbis*, (the same in syllables or words,) and *idem re et sensu*, the same in substance and in sense. 10 *Co.* 124 a, *Case of the Mayor and Burgeses of Lynn*.

Idem agens et patiens esse non potest. The same person cannot be both agent and patient. *Jenk. Cent.* 40, case 76. A man cannot, as a judge, administer justice to himself as a party. *Id.*

Idem est facere, et nolle prohibere cum pœssis. It is the same thing to do a thing, and to refuse to prohibit it when in your power. 3 *Inst.* 158. Not to forbid or prevent a thing when in your power, is the same as to do it yourself. See *Qui non prohibet &c.*

Idem est nihil dicere, et insufficienter dicere. It is the same thing to say nothing, and to say a thing insufficiently. 2 *Inst.* 178. To say a thing in an insufficient manner is the same as not to say it at all. Applied to the plea of a prisoner. *Id.*

Idem est non esse, et non apparere. It is the same thing not to be, as not to appear. *Jenk. Cent.* 207. Not to appear is the same thing as not to be. *Broom's Max.* 72. See *Apparens*.

IDEM. L. Lat. In old practice. The said, or aforesaid; said, aforesaid. Distinguished from *prædictus* in old entries, though having the same general signification. *Towns. Pl.* 15, 16. *Idem semper proximo antecedenti refertur.* *Idem* always refers to the next antecedent. *Co. Litt.* 20 b, 385 b.

IDEM SONANS. L. Lat. Sounding the same or alike; having the same sound; (L. Fr. *tout un sound*.) A term applied to names which are substantially the same, though slightly varied in the spelling, as Lawrence and Lawrance, and the like. 1 *Crompt. & M.* 806. 3 *Chitt. Gen. Pr.* 171.

IDEMPTITAS. L. Lat. [from *idem*, the same.] In old English practice. Sameness; identity. *Reg. Orig.* 104, et seq. Another form of *identitas*, (q. v.)

IDENTITAS. L. Lat. Identity; sameness. See *Ex multitudine signorum &c.*

IDEO. Lat. Therefore. *Calv. Lex.*

IDEO CONSIDERATUM EST. L. Lat. Therefore it is considered. The initial words of the ancient entry of judgment on the record in an action at law, and by which that part of the record is still sometimes called, in modern practice. *Cro. Jac.* 36. 3 *Bl. Com.* 396. 1 *Burr. Pr.* 254. See *Consideratum est*.

IDEOT. An old form of *idiot*, (q. v.)

IDEOTA. An old form of *idiota*, (q. v.)

IDES. [Lat. *idus*, from O. Lat. *iduate*, to divide, because they divided the month.] One of the three divisions of the ancient Roman month. In the months of March, May, July and October, the *ides* fell on the 15th; and in the other months on the 13th. *Adam's Rom. Antiq.* 355, 357.

IDIOT, *Idiot*. [Lat. *idiota*, *ideota*; from Gr. *ιδιωτης*, a private individual. See *infra*.] A fool, (*fatuus*), or person of no understanding, of which two kinds are mentioned in the books; an idiot from birth, (*idiota a nativitate*), otherwise called a natural fool; and an idiot from accident or sickness, (*idiota a casu et infirmitate*.) See *Idiota*. But these distinctions are not always observed; thus an idiot is expressly defined to be "he that is a natural fool from his birth, and knows not how to count twenty pence, or name his father or mother, nor tell his own age, or such like easy and common matters, so that it appears he hath no manner of understanding, reason or government of himself." *Termes de la ley*. See *Natural fool*. The terms *idiot* and *natural fool* are treated as synonymous by Coke and Blackstone, and Lord Hardwicke has observed that "an idiot was such as was so a nativitate." *Co. Litt.* 247 a. 4 *Co.* 124 b, 128 a, *Beverley's Case*. 1 *Bl. Com.* 302, 303. 2 *Vesey*, 407. See 1 *Collinson on Idiots*, 1. *Stock on Non Compotes Mentis*, Introd.

The original form of this word is the Greek *ιδιωτης*, a private individual, one in private life, from *ιδιος*, one's own, peculiar, by one's self, (Lat. *suus*, *sui generis*.) Hence the Gr. *ιδιωτης*, to lead a private life. This original sense was retained in the Latin form *idiota*, which is used by Seneca and other writers, to denote a private person. But another meaning was more commonly given to the latter word,

viz. an illiterate or ignorant person, one deficient in learning or understanding, and from this has been derived the intenser sense of the word *idiot* in modern law.

IDIOTA. Lat. [from Gr. *ιδιωτης*, a private individual.] In the civil law. An unlearned, illiterate or simple person. *Calv. Lex.* A private man; one not in office. *Id.*

In the common law. An idiot, or fool. *Reg. Orig.* 266, 267. *Idiota a nativitate*; an idiot from birth, or natural fool. *Id. ibid.* 1 *Bl. Com.* 303. *Idiota a casti et infirmitate*; an idiot from accident and sickness. *Mem. Scacc.* 20 *Edw.* 1. *Id. ibid.* note. *Purus idiota*; an absolute fool.

IDONEARE. L. Lat. [from *idoneus*, q. v.] In old European law. To make or prove one's self innocent, (*idoneum se facere—insontem se reddere*;) to clear one's self according to law, from an accusation of guilt. *LL. Longob.* lib. 2, tit. 35, l. 4. *Capitul.* lib. 3, tit. 89. *Spelman.*

IDONEUS. Lat. In the civil and common law. Sufficient; competent; fit or proper; responsible; unimpeachable. *Idoneus homo*; a responsible or solvent person. *Calv. Lex.* A competent or credible person; a good and lawful man. *Spelman.* A person apt and fit to execute an office. 8 *Co.* 41 b, *Griesley's case*. "He is said in law to be *idoneus* who has these three things, honesty, knowledge and ability." *Id. ibid.* *Idonea persona*; a fit person or parson. 6 *Co.* 49 b, *Boswell's case*. "Which epithet *idonea* includes ability in learning and doctrine, honesty in conversation, and diligence in his function." *Id. ibid.*

Sufficient; adequate; satisfactory. *Idonea cautio*; sufficient security. *Reg. Orig.* 66, 67. *T. Raym.* 225. *Idonea paries*; a sufficient wall. *Calv. Lex.*

IDONIETAS. L. Lat. [from *idoneus*, q. v.] In old English law. Ability or fitness (of a parson.) *Artic. Cleri*, c. 13.

IGALE. L. Fr. Equal. *Kelham.* Another form of *egale*.

IGLISE. L. Fr. A church. *Kelham.* Another form of *eglise*.

IF. [Lat. *si*.] A word expressive of condition in deeds and other instruments. See *Condition*, *Si*.

"If," in a will, is sometimes construed "when," in order to advance the apparent

intention of the testator. 3 *Russ. Chan. Cas.* 365. 2 *Williams on Exec.* 932.

IGNITEGIUM. L. Lat. [from *ignis*, fire, and *tegere*, to cover.] In old English law. The curfew, or evening bell. *Cowell.* See *Curfew*.

IGNORAMUS. L. Lat. (We are ignorant, or, we know nothing of it.) In practice. A word formerly endorsed by a grand jury on the back of a bill of indictment, in cases where, after hearing the evidence, they thought the accusation groundless. 9 *Co.* 55 b, *The Poulterers' case*. *Cro. Jac.* 7. *Yelv.* 99. The words used for the same purpose in modern practice are "not a true bill," or "not found." 4 *Bl. Com.* 305. 4 *Steph.* 373. The term "*ignore*," however, is still applied in the books to this mode of disposing of an indictment; thus, when a jury throw out a bill they are said to *ignore* it.

IGNORANCE. See *Ignorantia*.

IGNORANTIA. Lat. Ignorance; want of knowledge. Distinguished from mistake, (*error*;) or wrong conception. 1 *Mackeld. Civ. Law*, 163, § 165. *Dig.* 22. 6. Divided by Lord Coke into *ignorantia facti* (ignorance of fact) and *ignorantia juris* (ignorance of law.) And the former he adds is twofold, *lectionis et lingue* (ignorance of reading and ignorance of language.) 2 *Co.* 3 b, *Manser's case*.

Ignorantia facti excusat. Ignorance of fact excuses, or is a ground of relief.* 2 *Co.* 3 b. Acts done and contracts made, under mistake or ignorance of a material fact, are voidable and relievable in law and equity. 2 *Kent's Com.* 491, and notes.

Ignorantia juris non excusat. Ignorance of the law is no excuse. 1 *Co.* 177 b, *Mildmay's case*. 2 *Co.* 3 b, *Manser's case*. *Ignorantia juris quod quisque tenetur scire, neminem excusat.* Ignorance of the [or a] law, which every one is bound to know, excuses no man. A mistake in point of law is, in criminal cases, no sort of defence. 4 *Bl. Com.* 27. 4 *Steph. Com.* 81. *Broom's Max.* 122. 7 *Carr. & P.* 456. And in civil cases, ignorance of the law, with a full knowledge of the facts, furnishes no ground either in law or equity, to rescind agreements, or reclaim money paid, or set aside solemn acts of the parties. 2 *Kent's Com.* 491, and note. A maxim said by Mr. Justice Story to be "laid up among the earliest rudiments of the law," 2 *Story's R.* 353. See 1 *Story's*

Eq. Jur. § 116. Another form of this maxim is, *ignorantia legis neminem excusat*. Ignorance of the law excuses no man. *Id.* § 111.

Ignorantia iudicis [est] *culamitas innocentie*. The ignorance of the judge is the misfortune of the innocent party. 2 *Inst.* 591.

IGNORARE. Lat. To be ignorant; to ignore, or throw out a bill of indictment. See *Ignoramus*.

IGNORARI. L. Lat. To be unknown. *Ignoratis terminis artis, ignoratur et ars*. Where the terms of an art are unknown, the art itself is unknown also. *Co. Litt.* 2 a.

Igneoscitur ei qui sanguinem suum qualiter redemptum voluit. The law holds him excused from obligation, who chose to redeem his blood (or life) upon any terms. Whatever a man may do under the fear of losing his life or limbs, will not be held binding upon him in law. 1 *Bl. Com.* 131.

IKENILD STREET. One of the four great Roman roads in Britain; supposed to be so called from the *Iceni*, who inhabited that part of England now known as Suffolk, Norfolk, Cambridgeshire and Huntingdonshire, through which it passed. *Camd. Brit.* fol. 343. *L.L. Edw. Conf.* c. 12. *Cowell. Spelman.*

IL. L. Fr. It. *Il covient*; it behooveth. *Litt.* sect. 61. *Il est dit*; it is said. A common expression in Littleton. *Litt.* sect. 601. Said by Lord Coke to be as good as a *concessum*, (q. v.) *Co. Litt.* 328 b.

He. *Il monstra*; he showeth. *Litt.* sect. 365. In the Civil Code of Louisiana, *il* is declared to be applicable both to males and females. Art. 3522.

ILLEVIABLE. Not leviable; that cannot or ought not to be levied. *Cowell.*

ILLICKES, Illegues, Illec, Alec. L. Fr. There. *Britt.* c. 21. *Kelham.*

ILLONQUES, Illoeques, Ilokes, Ilucques. L. Fr. There. *Britt.* c. 22. *Kelham.*

ILLUD. Lat. That. *Illud quod alias licitum non est, necessitas facit licitum*. That which otherwise is not lawful, necessity makes lawful. *Bract.* fol. 247. 10 *Co.* 61 a, *Bishop of Salisbury's case*. See *Necessitas*.

IMBARGO. An old form of *embargo*, (q. v.) *Stat.* 18 Car. II. c. 5.

IMBEZLE, Imbesil. Old forms of *embezzle*. *Stat.* 14 Car. II. c. 31. *Cowell.* See *Embezzle*.

IMBLADARE. L. Lat. [L. Fr. *embler, emblaver*.] In old English law. To plant or sow grain. *Bract.* fol. 176 b.

IMBRACER, Imbracery. Old forms of *embracer* and *embracery*, (qq. v.)

IMBRACIATOR. L. Lat. In old English law. An embracer. *Reg. Orig.* 189 a. See *Embracer*.

IMBREVIARE, Imbreviare. L. Lat. [L. Fr. *enbrever*.] In old English law. To commit to writing briefly, (*scripto breviter mandare*;) to put or copy into a schedule, (in *schedulam quod breve vocant, rem conscribere*;) to enrol. *Spelman. Magna Charta*, c. 18. *Et nomina eorum xii statim imbrevari faciant in quadam schedula*; and they shall cause the names of those twelve to be immediately written in a certain schedule. *Bract.* fol. 116. To make an inventory; to inventory. *Id.* fol. 60 b. Sometimes translated *imbreviate*.

IMBROCUS, Brocus. L. Lat. In old records. A brook, or water-passage. *Cowell.*

IMMISCERE. Lat. In the civil law. To mix or mingle with; to meddle with; to join with. *Calv. Lex.* *Culpa est immiscere se rei ad se non pertinenti*. It is fault or blameable conduct to meddle with a thing that does not belong or concern one's self. *Dig.* 1. 17. 36.

To take or enter upon an inheritance. A term applied to those heirs called *heredes sui*, corresponding with *adire*, which was applied to *heredes extranei*. *Calv. Lex.*

IMMATERIAL ISSUE. In pleading. An issue taken on an immaterial point, that is, a point not proper to decide the action. *Steph. Pl.* 99, 130. 2 *Tidd's Pr.* 921.

IMMITTERE. Lat. In the civil law. To put or let into, as a beam into a wall. *Calv. Lex.*

IMMOBILIS. Lat. Immoveable. *Immobilia*, or *res immobiles*; immoveable things, such as lands and buildings. 1 *Mackeld. Civ. Law*, 152, § 147. 2 *Kent's Com.* 347. *Immobilia alicui* [sequuntur.]

Immoveable things follow their site or position; are governed by the law of the place where they are fixed. 2 *Kent's Com.* 67.

IMPALARE. L. Lat. In old European law. To impale; to kill or wound by falling upon a paling. *L. Burgund.* tit. 23, § 2. *L. Ripuar.* tit. 70, § 3. *LL. Longob.* lib. 1, tit. 19, l. 10. *Spelman.*

IMPANEL. [L. Lat. *impanulare, impannellare.*] In practice. To enter the names of jurors on a *panel*, which in English practice is an oblong piece of parchment annexed by the sheriff to the writ of *venire*, and returned with it. 3 *Steph. Com.* 590. 2 *Tidd's Pract.* 785—787. See *Panel*.

In American practice, the term is applied not only to the general list of jurors returned by the sheriff, but sometimes also to the list of jurors drawn by the clerk for the trial of a particular cause.

Empanel is used by Cowell and Blount.

IMPANULARE. L. Lat. In old records. To impanel. *Paroch. Antiq.* 657. *Cowell.*

IMPARCARE. L. Lat. [from *in*, in, and *parcus*, a pound, or enclosed place.] In old English law. To impound. *Reg. Orig.* 92 b.

To shut up, or confine in prison. *Inducti sunt in carcerem et imparcati*; they were carried to prison and shut up. *Bract.* fol. 124.

IMPARL, Emparl. [from Fr. *enparler*, to speak together.] In practice. Literally, to *speak with* the plaintiff, which is supposed to have originally been its actual meaning. See *Imparlance*. To have time before pleading; to have time to plead. "To crave leave to *imparl*," in judgment records, is to ask for a continuance. *Kitch.* fol. 200. When jurors went aside or retired to deliberate on their verdict, they were anciently said to *imparl* (*enparler*), or talk together. See *Enparler*.

IMPARLANCE, Emparlance. [from *imparl*, (q. v.) L. Lat. *interlocutio, interlocutela, licentia loquendi.*] In practice. Time to plead in actions at law; literally, time to *talk with* the plaintiff. 1 *Tidd's Pr.* 462. 3 *Bl. Com.* 299.

A continuance on the judgment record, between the declaration and plea. 1 *Tidd's Pr.* 678.

Formerly an imparlance was asked for, by actual motion to the court; its original object being, as is supposed, to obtain time to *speak with* the plaintiff in order to effect, if possible, an amicable arrangement of the suit. 3 *Bl. Com.* 299. *Gillb. C. Pleas*, 42. The actual object of an imparlance, however, has long been merely the obtaining of further time to *plead*. Imparlances in personal actions have been recently abolished by statute 2 Will. IV. c. 39. 3 *Chitt. Gen. Pr.* 700.

In the sense of *time to plead*, imparlances have not been recognized in American practice; time, when necessary, being usually obtained in another way. See *Time to plead*. But as *continuances*, they have been retained in judgment records, and serve conveniently to connect the proceedings between declaration and plea, where those pleadings do not take place in the same term. 1 *Burr. Pr.* 265. The continuance by imparlance has been expressly abolished in English practice. *Reg. Gen. Hil. T. 4 W. IV. reg. 2.* See *Continuance*.

IMPARSONEE. L. Fr. [L. Lat. *impersonatus.*] In ecclesiastical law. One who is inducted and in possession of a benefice. Parson imparsonee, (*persona impersonata*.) *Cowell. Dyer*, 40.

IMPEACH. [L. Fr. *empescher*; L. Lat. *impetere, impescare, impechiare.*] To accuse or challenge; to call to account; to make or hold liable; to sue. See *Impeachment*.

IMPEACHMENT OF WASTE. [L. Fr. *empeschement de wast*; L. Lat. *impetitio vasti.*] Liability for waste: liability to be proceeded against or sued for committing waste upon lands or tenements. All tenants for life, or any less estate, are punishable or liable to be impeached for waste, both voluntary and permissive, unless their leases be made as they sometimes are, without impeachment of waste, (*absque impetitione vasti.*) 2 *Bl. Com.* 283. See *Absque impetitione vasti*, *Without impeachment of waste*.

IMPECHIARE. L. Lat. [from Fr. *empescher*.] In old records. To impeach or accuse. *Cowell.*

IMPEDIENS. L. Lat. [from *impedire*, q. v.] In old practice. One who hinders; an impedient. The defendant or deforciant in a fine was sometimes so called. *Cowell. Blount.*

IMPEDIRE. Lat. [from *in*, *in*, and *pes*, foot.] To impede, prevent or embarrass motion, as by something about the feet; to obstruct or hinder generally; to disturb.* Bracton gives the etymology of this word, but applies it in a peculiar manner. *Impedire est ponere pedem in jus alienum quod quis habet in jure presentandi, cum quasi seysina et jure quali quali, &c.* *Impedire* is to put the foot (*pedem*) into another's right to a presentation, with a sort of seisin, and color of right. *Bract.* fol. 247. See *Impedit*.

IMPEDIT. Lat. [from *impedire*, q. v.] He hinders. See *Impedire*, *Quare impedit*. *Impedit componitur de in et pes pedis, et unde revera ille impedit qui nititur intus pedem ponere in jus alienum, ubi nullum jus ei competit.* *Impedit* is compounded of *in*, and *pes, pedis*, whence he truly *impedes* who endeavors to put his foot into another's right, where no right belongs to him. *Bract.* fol. 247.

IMPEDITOR. L. Lat. [from *impedire*, q. v.] In old English law. A disturber in the action of *quare impedit*. *Stat. Marl.* c. 12.

IMPENSÆ. Lat. [from *impendere*, to lay out, or bestow.] In the civil law. Expenses; outlays. 1 *Mackeld. Civ. Law*, 157, § 155. *Calv. Lex.*

IMPERATOR. Lat. [from *imperare*, to command.] Emperor; the title of the Roman emperors. Justinian, in the preface to the Institutes, styles himself "Imperator, Cæsar Flavius Justinianus," &c. *Inst. præf.* *Imperator solus et conditor et interpres legis existimatur*; the emperor alone is considered the maker and interpreter of the law. *Cod.* 1. 14. 12.

A title given to the kings of England in charters before the conquest. *Selden's Tit. of Hon.* I. 2. 1 *Bl. Com.* 242.

"IMPERFECT," applied to a testamentary paper, technically means that the document is, upon the face of it, manifestly in progress only, and unfinished and incomplete as to the body of the instrument. 2 *Addams' R.* 357. 1 *Williams on Exec.* 61.

IMPERITIA. Lat. [from *in*, priv. and *peritia*, skill.] Want of skill; unskilfulness. *Imperitia culpa adnumeratur.* Want of skill is reckoned as *culpa*; that is, as blameable conduct or neglect. *Dig.* 50, 17. 132. Thus, if a surgeon perform an operation unskilfully, or a physician

carelessly administers medicine, so that the death of the patient follows, they are respectively liable for the result. *Inst.* 4. 3. 7. And so, in any art or trade, if a man performs his work unskilfully, he becomes responsible in damages. 2 *Kent's Com.* 588. *Story on Bailm.* §§ 390 a, 428, 431. See *Culpa, Peritia, Spondet peritiam artis.*

Imperitia est maxima mechanicorum pecunia. Unskilfulness is the greatest punishment of mechanics; [that is, from its effect in making them liable to those by whom they are employed.] 11 *Co.* 54 a, *Ipswich Tailors' case*. The word *pæna* in some translations is erroneously rendered *fault*.

IMPERPETUUM. L. Lat. In old records and entries. Forever. *Towns. Pl.* 19.

IMPERSONALITAS. Lat. Impersonality. A mode of expression where no reference is made to any person, such as the expression *ut dicitur*, (as is said.) *Co. Litt.* 352 b. *Impersonalitas non concludit nec ligat.* Impersonality neither concludes nor binds. *Id. ibid.*

IMPERIUM. Lat. In the civil law. Power or command; military power or command, (*potestas armata*;) authority and power of a superior kind; the power of punishing, (*gladii potestas*.) *Calv. Lex. Heinec. Elem. Jur. Civ. lib.* 4, tit. 17, §§ 1318—1322.

IMPERTINENCE. [from Lat. *in*, priv. and *pertinere*, to belong to.] In equity pleading. The quality of *not belonging* to a thing, or matter in question; superfluousness; irrelevance. The introduction of any matters into a bill, answer or other pleading or proceeding in a suit, which are not properly before the court for decision, at any particular stage of the suit. *Story's Eq. Pl.* § 266. 1 *Daniell's Chanc. Pr.* (Perkins' ed.) 399, and notes. Impertinence is the same description of fault in pleadings in equity, which, in those at common law, is denominated *surplusage*. *Id.* 400. Sometimes distinguished from *prolixity*. *Id. ibid.*

IMPERTINENT. In equity pleading. That which does not belong to a pleading interrogatory or other proceeding; out of place; superfluous; irrelevant. See *Impertinence*.

IMPESCARE. L. Lat. [from L. Fr. *empescher*.] In old records. To impeach or accuse. *Impescatus*; impeached. *Blount.*

IMPETERE. L. Lat. [from *in*, against, and *petere*, to demand.] In old English law. To impeach, or accuse. *Impetebatur tunc Guntheramnus de interitu Theodoberti*; Gunthram was then accused of the slaying of Theodobert. *Greg. Turon. Hist. lib. 5. c. 14. Spelman, voc. Impetitus.*

To call to account, or hold accountable; to sue. 2 *Bl. Com.* 283. See *Impetitio, Impeachment.*

IMPETITIO. L. Lat. [from *impetere*, q. v.] In old English law. An accusation, charge or impeachment. *Spelman.*

A calling to account, or holding accountable or liable; a prosecuting for some alleged damage. *Impetitio vasti*; impeachment of waste. *Id.* 2 *Bl. Com.* 283.

A demand. 11 *Co.* 82 b, *Bowles' case.*

A suit. *Glanv. lib. 13, c. 17.*

In *Leake v. Eyre*, the court held that *impetitio* was a corruption of *impeditio*, and imported the same thing with that word, or *impedimentum*, viz. a hindrance. *Cro. Jac.* 216. And see *Cowell, voc. Impeachment of waste.* But Lord Coke has very satisfactorily shown it to be a genuine word. 11 *Co.* 82 b.

IMPETITUS. L. Lat. [from *impetere*, q. v.] In old English law. Impeached, accused or charged with an offence; an accused person. *LL. Hen. I. c. 6. Spelman.*

IMPETRARE. Lat. In old English practise. To obtain by request, as a writ or privilege. *Bract. fol. 57, 172 b.* This application of the word seems to be derived from the civil law. *Calv. Lex.*

IMPETRATIO. Lat. [from *impetrare*, q. v.] An obtaining by request, or prayer. Applied in old practice to writs and liberties. *Bract. fol. 57, 172 b.* *Impetration* is used in old English statutes, for the pre-obtaining of benefices and church offices from the court of Rome. *Stat. 25 Edw. III. Stat. 38 Edw. III. st. 2. c. 1. Cowell.*

IMPIERMMENT. L. Fr. Impairing or prejudicing. *Stat. 23 Hen. VIII. c. 9. Blount. Kelham. See Empire.*

IMPIGNORATA. L. Lat. Pledged; given in pledge, (*pignori data*;) mortgaged. A term applied in Bracton to land. *Bract. fol. 20.*

IMPLACITARE. L. Lat. [from *in*, into, and *placitum*, a plea or suit.] In old English law and practice. To subject to an action, or *placitum*; * to implead or sue.

In omni casu quo minores infra aetatem implacitare possunt; in every case in which minors under age may sue. *Stat. Westm. 2, c. 15. Nec implacitabit nec implacitabitur*; shall neither implead nor be impleaded. *Bract. fol. 86 b.*

IMPLACITATUS. L. Lat. [from *implacitare*, q. v.] Impleaded; sued. *Cum aliquis implacitatus coram aliquibus justitiariis, &c.*; when any one impleaded before any justices, &c. *Stat. Westm. 2, c. 31. See Bract. fol. 102 b.*

IMPLEAD. [from L. Fr. *implader* or *empleder*; L. Lat. *implacitare*, q. v.] In practice. To sue, or prosecute by due course of law. *Termes de la ley.* Still used in records.

IMPLEADED. [L. Fr. *implede*; L. Lat. *implacitatus*.] Sued or prosecuted. Still used in practice, particularly in the titles of causes where there are several defendants.

IMPLEDER. L. Fr. To implead. *Implede*; impleaded or sued. *Stat. Glocest. c. 12.* The more usual form was *empleder*, (q. v.)

IMPLEMENT. [L. Lat. *implementum*, from *implere*, to fill, fulfil or accomplish.] In a general sense. Whatever may supply wants. *Webster.* Any thing used for the performance of a work, or the accomplishment of a purpose.* *Webster* states this to be a word of very extensive signification.

In a stricter sense. A thing or instrument necessary, or ordinarily used for the performance of work or labor, or the prosecution of any game or sport; a tool or utensil.* More commonly used in the plural (implements), and in this sense confined to inanimate things, as *implements* of trade, of agriculture, &c. In *Coolidge v. Choate et al.* it was said that the word *implements* had the same meaning as *apparatus*, and did not include animals or beings having life. 11 *Metcalf's R.* 79.

IMPLICATION. Intendment or inference, as distinguished from the actual expression of a thing in words. By a will, an estate may pass by mere *implication*, without any express words to direct its course. 2 *Bl. Com.* 381. 4 *Kent's Com.* 541, and note. In general, where any implications are allowed, they must be such as are necessary, (or at least highly probable,) and not merely possible implications. 2 *Bl. Com.* 382. In construing a will, conjecture

must not be taken for implication, but necessary implication means not natural necessity, but so strong a probability of intention, that an intention contrary to that which is imputed to the testator cannot be supposed. Lord Eldon, C., 1 *Ves. & B.* 466. See 3 *Paige's R.* 1. 1 *Jarman on Wills*, 465, (431, Perkins' ed.) *et seq.*

IMPLIED ABROGATION. Abrogation by implication; as where a law contains provisions contrary to those of a former law, without expressly abrogating such law; or where the reason of a law, or object for which it was passed, has ceased to exist. See *Cessante ratum leges, cessat et ipsa lex*.

IMPLIED CONDITION. See *Condition implied*.

IMPLIED CONSIDERATION. A consideration implied or presumed by law, as distinguished from an *express* consideration, (q. v.)

IMPLIED CONTRACT. A contract implied by reason and justice, and which therefore the law presumes that every man undertakes to perform. As if I employ a person to do any business for me, or perform any work, the law implies that I undertook or contracted to pay him as much as his labor deserves. 2 *Bl. Com.* 443. 3 *Id.* 158—165. 2 *Steph. Com.* 110, 111. Sometimes called an implied *assumpsit*. 3 *Bl. Com. ub. sup.*

IMPLIED COVENANT. A covenant implied or inferred from certain words in deeds, leases, &c.; as "give," "grant, bargain and sell," "demise," and the like. 4 *Kent's Com.* 473, 474. 2 *Hilliard's Real Prop.* 365, 366.

IMPLIED TRUST. A trust raised or created by implication of law; a trust implied or presumed from circumstances.* 2 *Crabb's Real Prop.* 571, § 1796. 1 *Steph. Com.* 346. A more general term than "resulting," or "constructive" trust. 2 *Crabb's R. P. ub. sup.* See 2 *Story's Eq. Jur.* § 1195, *et seq.* 1 *Hilliard's Real Prop.* 305.

IMPLIED WARRANTY. A warranty implied by law from circumstances, as distinguished from an express or actual warranty. Thus, if the seller of a chattel have possession of it and sell it as his own, and not as agent for another, and for a fair price, he is understood to warrant the title.

2 *Kent's Com.* 478. A warranty of the quality of an article sold is also sometimes implied. *Id.* 478—481, and notes.

A warranty implied from an instrument, or from particular words in an instrument. Thus, in every policy of insurance there is an implied warranty that the ship is seaworthy when the policy attaches. 3 *Kent's Com.* 287. 1 *Phillips on Ins.* 308. So in ancient deeds, the law implied a warranty from the word *dedi*. See *Dedi*.

IMPONERE. L. Lat. [from *in*, *in*, or upon, and *ponere*, to put.] In old practice. To put in. *Imposuit commune ballium*; he put in common bail. 1 *Salk.* 8, pl. 19. To put upon, or impose. See *Impositio*.

To **IMPORT.** [from Lat. *importare*, from *in*, into, and *portare*, to carry or bring.] In a general sense. To bring to, or in; to bring to or into a country. This sense of the word was contended for in the case of the *Ship Adventure and Cargo*, but disallowed by Marshall, C. J., 1 *Brock. R.* 235.

In a stricter sense. To bring goods, chattels or other property into a country from another country; to bring from a foreign port; to bring by sea, or in the way of trade.* See *Import*.

IMPORT. A thing imported; a thing or article brought into a country from another country. More commonly used in the plural. See *Imports*.

IMPORTS. Things imported. Marshall, C. J., 12 *Wheaton's R.* 419. Things, commodities or articles of property imported into a country from another country.* Woodbury, J., (dissenting,) 7 *Howard's R.* 535. "No state shall, &c., lay any imposts or duties on imports or exports," &c. *Const. U. S.* Art. 1. Sect. 10. The term is not properly applicable to *persons*, except to that description of persons who are regarded as property, viz: slaves. Taney, C. J., (dissenting,) 7 *Howard's R.* 477. Daniel, J., (dissenting,) *Id.* 505. Woodbury, J., (dissenting,) *Id.* 535.

IMPORTUNITY. [Lat. *importunitas*.] Pressing solicitation; urgent request; application for a claim or favor which is urged with troublesome frequency or pertinacity. *Webster*. Importunity is sometimes a ground for setting aside a will. But it must be in such a degree as to take away from the testator free agency; it must be such importunity as he is too weak to resist; such as will render the act no

longer the act of the deceased, not the free act of a capable testator, in order to invalidate the instrument. Sir John Nicholl, 2 *Phillim. R.* 551, 552. 1 *Williams on Exec.* 41.

IMPOSITIO. Lat. [from *imponere*, q. v.] In old English law. An imposition, tax or tribute. According to Lord Coke, this word was first used in the 13th year of Edward III. 2 *Inst.* 60, 530. The older expression was *malotot*. *Stat. Confirm. Chartar.* c. 7. 2 *Inst.* 530.

IMPOSSIBILIS. Lat. Impossible. See *Calv. Lex. Jur.* *Impossibilia nulla obligatio est.* There is no obligation of [to do] impossible things. *Dig.* 50. 17. 185. [145.] As if a man promises to give another the moon. *Id. gloss. marg.* See 2 *Story's Eq. Jur.* §§ 1308—1310. *Lex non cogit ad impossibilia.* The law does not compel the performance of impossibilities. *Hob.* 96.

IMPOST. Fr. & Eng. [from *imposer*, to lay upon; Lat. *impositum*, a thing laid upon.] A custom or tax levied on articles brought into a country. Marshall, C. J., 11 *Wheaton's R.* 419.—A duty on imported goods and merchandize. *Story on the Const.* (Abr.) § 474.

In a large sense, any tax, duty or imposition.* *Id. ibid.*

IMPOSTERUM. L. Lat. Hereafter. *Towns. Pl.* 72.

IMPOTENS. Lat. [from *in*, priv. and *potens*, able.] Unable; impotent; without power or ability. *Impotens sui*; having no power of himself, unable to help himself. *Bract.* fol. 15.

IMPOTENTIA. Lat. [from *impotens*, q. v.] Inability; impossibility. *Impotentia excusat legem.* Inability or impossibility excuses law. *Co. Litt.* 29 a. 10 *Co.* 139, *Keighley's case.* 2 *Bl. Com.* 127. *Broom's Max.* 116. The impossibility of a thing dispenses, in certain cases, with a requirement of law. See *Lex non cogit ad impossibilia.* Where the performance of the condition of a bond or recognizance is rendered impossible by the act of God, or of the law, or of the obligee, the default to comply with it is excused. 3 *Hill's (N. Y.) R.* 570.

IMPOUND. To put in a pound; to place cattle, goods or chattels taken under

a distress, in a lawful pound. *Hollhouse.* See *Pound.*

IMPRIMATUR. Lat. [from *imprimere*, q. v.] (Let it be printed.) A license to print a book; so termed from the emphatic Latin word formerly used to express it.

IMPRIMERE. Lat. To press upon; to impress or press; to imprint or print.

IMPRIMERIE, Imprimery. In old English law. A print; an impression. *Cowell.*

The art of printing. *Id.*

A printing house or office. *Id. Stat.* 14 *Car. II.* c. 33.

IMPRIMIS. Lat. In the first place; first of all. A word formerly very common in the commencement of wills. 2 *Powell on Devises*, 647, 648. Used also in old English statutes and charters to denote the commencement or first clause. *Artic. Cleri*, c. 1. *Cart.* 31 *Edw. I.* apud *Molloy de Jur. Mar.* 370—380.

IMPRISON. [L. F. *enprisoner*; L. Lat. *imprisonare*, q. v.] To put in a prison; to put in a place of confinement. See *Imprisonare.*

To confine a person, or restrain his liberty, in any way. See *Imprisonment.*

IMPRISONARE. L. Lat. [from L. Fr. *emprisoner*, q. v.] In old English law and practice. To imprison. *Quare vi et armis ipsum A. apud N. cepit, imprisonavit et male tractavit, et ipsum sic imprisonatum abinde usque T. duxit, et ipsum ibidem in prisona—detinuit, &c.*; wherefore with force and arms the said A. at N. he took, imprisoned and ill treated, and him so imprisoned took from thence to T. and him there in prison detained, &c. *Reg. Orig.* 93.

IMPRISONMENT. [L. Lat. *imprisonamentum*.] A putting into prison; confinement of a person in a prison or gaol. See *Imprison, Prison, Prisoner.*

Confinement of the person in any wise. 1 *Bl. Com.* 136.—Any restraint of the person by force. Lord Denman, C. J., 7 *Ad. & Ell.* N. S. 742. 753.—Any restraint upon a man's liberty, wherever may be the place, or whatever may be the manner in which the restraint is effected; as by keeping a man against his will in a private house, or arresting or forcibly detaining him in the open street, or even merely using words which impose a restraint upon

his person.* *Termes de la ley*. 1 *Bl. Com.* 136. 2 *Inst.* 589. 2 *Kent's Com.* 26. See the late case of *Bird v. Jones* in the Queen's Bench, 7 *Ad. & Ell. N. S.* 742.

IMPROBARE. Lat. In the civil law. To disapprove; to disallow; the opposite of *approbare*. *Calv. Lex.*

IMPROBATION. [from Lat. *improbare*, to disallow.] In Scotch law. An action brought for the purpose of having some instrument declared false and forged. 1 *Forbes' Inst.* part 4, p. 161. *Scotch Dict. Whishaw*. The verb *improve* (q. v.) was used in the same sense.

IMPROPRIATION. In English ecclesiastical law. A lay appropriation; a benefice in the hands of a lay person, or lay corporation. 1 *Bl. Com.* 386. *Termes de la ley*. So called, according to Spelman, as being *improperly* in the hands of laymen. *Spelm. Tithes*, c. 29. See *Appropriation*.

IMPROVE. In Scotch law. To disprove; to invalidate or impeach; to prove false or forged. 1 *Forbes' Inst.* part 4, p. 162.

IMPROVEMENTS. A term used in leases, which, according to Mr. Chitty, is sometimes of doubtful meaning. It would seem to apply principally to buildings, though generally it extends to the amelioration of every description of property whether real or personal; but when contained in any document, its meaning is generally explained by other words. 1 *Chitt. Gen. Pr.* 174.

IMPRUIARE. L. Lat. In old records. To improve land. *Impruiamentum*; the improvement so made of it. *Chartul. Abbat. MS.* fol. 50 a. *Cowell*.

IMPUBES, (pl. IMPUBERES.) Lat. In the civil law. A minor under the age of puberty; a male under fourteen years of age; a female under twelve. *Calv. Lex.* 1 *Mackeld. Civ. Law*, 136, § 126.

IMPUNITAS. Lat. Impunity; exemption from punishment. *Impunitas continuum affectum tribuit delinquenti*. Impunity offers a continual bait to a delinquent. 4 *Co.* 45 a, *Vaux's case*.

Impunitas semper ad deteriora invitat. Impunity always invites to greater crimes. 5 *Co.* 109 a, *Foxley's case*.

IN. Lat. and Eng. [Fr. *en*.] Sometimes construed to mean "of." Thus, coroner in a county was held to mean coroner of a county. *Plowd.* 76. 4 *Co.* 41.

IN. [L. Fr. *eins*.] A term used from a very early period to express the nature of a title, or the mode of acquiring an estate, or the ground upon which a seisin is founded. Thus, in Littleton, a tenant is said to be "in by lease of his lessor," (*eins per lease son lessor*), that is, his title or estate is derived from the lease. *Litt.* sect. 82. So, parceners are said to be "in by divers descents." *Id.* sect. 313. So, the issue of a husband is said to be "in by descent," (*eins per descent*.) *Id.* sect. 403. So, two sisters are said to be "in by divers titles." *Id.* sect. 662. So, in modern law, parties are constantly said in the books to be "in by descent," "in by purchase." A dowress is said to be "in, of the seisin of her husband." 4 *Kent's Com.* 69. A devisor is said to be "in, of his old estate." 1 *Powell on Devises*, (by Jarman,) 621, note. So, a lessor. Shaw, C. J. 1 *Metcalfe's R.* 120. See *Eins*.

This term seems to be a contraction of "in seisin," and to be properly expressive of actual possession of the land. Thus, in Britton it is said, "*si le heire soit de pleyn age, et soit eins, et ne voet suffer le seignour de aver seisine*," &c.: if the heir be of full age, and be in, and will not suffer the lord to have seisin, &c. *Britt.* c. 70. It is essentially figurative, and belongs to the same period with the now obsolete phrase "to come to land," implying in its origin an actual entry and possession. Thus, it is said "when the lord of a villein enters, he comes to the land in respect of a title paramount, that is to say, in respect of villeinage, and the lord by escheat in respect of the seignior which was a title paramount, and both those are in merely in the post," &c. 3 *Co.* 62 b, *Lincoln College's case*. That it was expressive of mere seisin without lawful title, appears clearly from Littleton's expression "*eins encounter la ley*," (in against the law.) *Litt.* sect. 306.

IN ACTION. Attainable or recoverable by action; not in possession. A term applied to property of which a party has not the possession, but only a right to recover it by action. See *Chose in action*.

IN ADVERSUM. L. Lat. Against an adverse, unwilling or resisting party. "A